UNITED
NATIONS

E

Economic and Social
Council

Distr
GENERAL

E/CN.4/2000/32
17 March 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report of the High Commissioner for Human Rights on the situation of human rights in Kosovo, Federal Republic of Yugoslavia

CONTENTS

	Paragraphs	Page
Introduction	1 - 6	2
I. SECURITY CONCERNS AND THE RIGHTS OF PERSONS BELONGING TO MINORITIES	7 - 12	3
II. RIGHTS OF PRISONERS AND DETAINEES	13 - 19	4
III. ESTABLISHMENT OF THE RULE OF LAW	20 - 25	6
IV. PROMOTING A HUMAN RIGHTS CULTURE	26 - 27	7
V. RECOMMENDATIONS	28 - 44	7

GE.00-11750 (E)

Introduction

1 In its resolution 1999/2 of 13 April 1999 the Commission on Human Rights requested the High Commissioner to report to it urgently on the situation of human rights and the humanitarian crisis relating to Kosovo and on the implementation of the provisions of the resolution. Pursuant to that request, the High Commissioner submitted reports on 31 May 1999 (E/CN 4/2000/7) and 27 September 1999 (E/CN 4/2000/10) in addition to her oral updates during the fifty-fifth session of the Commission itself. The present report addresses recent human rights developments as well as the activities of the Office of the High Commissioner for Human Rights in the Federal Republic of Yugoslavia (OHCHR-FRY), including Kosovo. The Commission will also have before it the report of the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, Mr. J. Dienstbier (E/CN 4/2000/39).

2 Pursuant to Security Council resolution 1244 (1999) of 10 June 1999, the Secretary-General established the United Nations Interim Administration in Kosovo (UNMIK) with the assistance of relevant international organizations. UNMIK is composed of four "pillars", with the pillar devoted to institution-building (including the areas of human rights, democratization and civil society) placed under the responsibility of the Organization for Security and Cooperation in Europe (OSCE). It was further decided to create a post of Senior Human Rights Adviser in the Office of the Special Representative of the Secretary-General (SRSG) in Pristina. The Senior Human Rights Adviser was appointed in September 1999 on recommendation of the High Commissioner for Human Rights. His role has been to ensure a proactive approach on human rights in all UNMIK activities and the compatibility of UNMIK regulations with international human rights standards.

3 The deployment of the large international presence in Kosovo was soon followed by the resumption of activities of OHCHR-FRY in the region. OHCHR has sought to bring to the international presence in Kosovo the advantage of its mandate to monitor, report on and promote human rights throughout the Federal Republic of Yugoslavia (FRY). Partly in recognition of this mandate, the SRSG in September 1999 appointed OHCHR-FRY to organize and chair the Commission on Prisoners and Detainees. Since then OHCHR staff, including personnel seconded by the Governments of Switzerland and Norway, have placed a priority on the question of detention, interviewing families of over 200 persons taken into custody in Kosovo and consolidating this information with other cases in OHCHR files for follow-up in Belgrade, Pristina and elsewhere.

4 The High Commissioner wishes to pay tribute to the work carried out under the most difficult circumstances by UNMIK, OSCE, the Office of the United Nations High Commissioner for Refugees (UNHCR) and other intergovernmental and non-governmental organizations involved in the promotion and protection of human rights, establishment of the rule of law, and advancement of the principles of tolerance and peaceful coexistence in Kosovo. The vision of a multi-ethnic society in which the rights of all persons are respected equally, as set out in Security Council resolution 1244 (1999), remains to be achieved. Progress toward this goal has proven extremely difficult. The High Commissioner considers it imperative that the international community continue with its best efforts, including by providing UNMIK with the necessary resources to accomplish its task.

5. It is important, in addition, to recognize the role of the Stability Pact for South Eastern Europe, established in June 1999. The Stability Pact represents the collective effort of the European Union, the Group of eight countries (G-8), the countries of the region and key international organizations to address the challenges of the region in a coordinated and strategic manner. It is to be hoped that the necessary financial resources will be provided so that the Stability Pact can achieve its ambitious goals, including in connection with the urgent needs of Kosovo.

6. The present report considers four areas that the High Commissioner considers to be crucial to the restoration of order and the long-term protection of human rights in Kosovo: security concerns, including the rights of persons belonging to minorities; the rights of prisoners and detainees; establishment of the rule of law; and promoting a human rights culture. The report concludes with a series of recommendations for further action.

I. SECURITY CONCERNS AND THE RIGHTS OF PERSONS BELONGING TO MINORITIES

7. The exodus from Kosovo of persons belonging to minorities has continued since the High Commissioner's last report. While the vast majority of refugees and internally displaced persons (IDPs) who fled the region during the North Atlantic Treaty Organization (NATO) campaign of 1999 have returned, many others - mainly members of minority communities - have since fled from Kosovo. The Yugoslav Red Cross gives a figure of some 235,000 Serb and Roma IDPs now in Serbia and Montenegro. UNHCR is conducting a registration exercise together with local authorities to verify this figure.[1] Estimates for the number of Serbs remaining in Kosovo range up to some 100,000, in an overall population of roughly 2 million. Estimates for other communities include around 30,000 Roma (although many more may be present but unreported), up to 35,000 Muslim Slavs, over 20,000 Turks, 12,000 Gorani and some 500 Croats.[2] Final and definitive figures will not be available until a civil registration exercise has been completed.

8. During the final months of 1999 grave violations of human rights, mostly but not only of persons belonging to minorities, persisted in Kosovo. Dozens of killings were reported. Violations continue in 2000. Reports on violence in Kosovo have recently cited a decrease in the number of crimes directed against non-Albanians, but it is important to note that the number of potential targets is greatly reduced. Crimes committed against Serbs in Podujevo, for example, have ceased, since virtually all Serbs have left the town. Crimes committed against Muslim Slavs (Bosniaks) have risen, including with the January murder of four members of the same family in Prizren. The number of such crimes is now likely to decrease: after the Prizren murders, human rights workers and UNHCR reported the arrival of hundreds of Muslim Slav IDPs from Kosovo in Novi Pazar, Sandzak. Violations of human rights in Kosovo are targeted acts that spread fear among all Kosovo's populations. Recent events in Mitrovica, in which both Serbs and Albanians died, have highlighted the continuing fragility of inter-ethnic coexistence.

9. Minorities across the province continue to face serious restrictions on freedom of movement. In an effort to address this problem, UNHCR has organized a few bus lines between

localized Serb enclaves. These short-line transports cannot be considered public transportation, but are a first attempt by the international community to address the isolation of enclave residents. The cooperation of all sectors and local leaders will be essential to ensure that all Kosovo's residents can enjoy freedom of movement in a climate of respect and tolerance.

10. Access to employment is especially difficult for minority group members. As a result, many families are heavily dependent on humanitarian assistance for survival. Further efforts need to be undertaken to develop employment opportunities for persons belonging to minorities, and to ensure that unfair dismissals based on ethnic grounds are prevented. Access to basic services, including health and education, on an equitable basis also needs to be improved. The prevailing security situation and the related matter of freedom of movement have a major impact on this question. Devising appropriate strategies to meet the needs of minorities in this area remains a major challenge for UNMIK. The question of restitution of property will be of great importance to the minority population, including those displaced within Kosovo and elsewhere, who might wish to return to their homes.

11. The international community has been making relentless efforts to bring peace and stability to a multi-ethnic and multi-cultural Kosovo, including through the establishment by international organizations of the Task Force on Minorities. But whatever the international efforts, they cannot succeed without more direct, active and responsible engagement by all local ethnic groups in establishing law and order, tolerance, and a pluralistic society.

12. Ongoing efforts to ensure the active participation of minorities within the joint interim administrative structure deserve support. UNMIK has appointed local community officers to address the needs and concerns of minorities within the broad framework of civil administration. UNMIK, including the OSCE, is also encouraging the development of civil society. This process should facilitate inter-ethnic contacts at the community level. Progress is to be noted in the recruitment of minority community members to the Kosovo Police Service. A police force that is representative of all sectors of the population will be a key factor in confidence-building.

II. RIGHTS OF PRISONERS AND DETAINEES

13. The number of persons deprived of liberty in the Kosovo conflict remains unknown. No party to the conflict, despite repeated requests by OHCHR and others, has released the names of individuals it has detained. Available data are therefore based on information gathered in the field. The International Committee of the Red Cross (ICRC) released a report on 24 February 2000 which contains figures concerning missing and detained people. As of 1 February, ICRC records showed 1,571 persons visited in detention in Serbia and Montenegro and 54 people in the custody of the international security force in Kosovo (KFOR). Between 12 June 1999 and 1 February 2000, the ICRC had facilitated the release of 415 persons from the above-mentioned detention centres outside Kosovo. According to the ICRC, based on tracing requests received throughout the Kosovo crisis, the fate and whereabouts of another 2,987 persons remain unknown. Of these, 1,875 were reportedly arrested by the Yugoslav Army or security forces or abducted by Serb civilians, and 346 were reportedly abducted by the Kosovo Liberation Army (KLA) or Kosovo Albanian civilians. Information on

the whereabouts or detaining party of an additional 766 persons is lacking.[3] These figures correspond to those presented by most non-governmental organizations, as well as the Government of the FRY.

14. In the context of international efforts in Kosovo, the High Commissioner considers the protection of the rights of prisoners and detainees to be one of her Office's priorities. The speedy and even-handed solution of this problem could reduce tensions among ethnic groups and bring durable benefits for the peace-building process. Since 1996, OHCHR has monitored criminal proceedings and regularly presented its findings. Many of the persons convicted and sentenced during those earlier prosecutions are still imprisoned. After events in Drenica in November 1997 and February-March 1998, new proceedings were brought and continued following mass arrests in 1998 and early 1999. During that period, OHCHR monitored virtually every trial of alleged terrorists in Kosovo. Working with defence attorneys, prosecutors, district courts and the Serbian Ministry of Justice, inquiries by OHCHR from 1998 to March 1999 facilitated or led to the release of several hundred persons detained in connection with the crisis in Kosovo. By the start of the NATO campaign, however, approximately 1,800 cases were still pending, some in absentia.

15. On 21 September 1999, UNMIK established the Commission on Prisoners and Detainees in the framework of the Kosovo Transitional Council, under the chairmanship of the OHCHR Chief of Mission. The Commission gathers information on the circumstances of detention to support interventions and advocacy on behalf of detainees, prisoners and their families. Commission members are drawn from all parts of Kosovo and represent a broad spectrum of social and ethnic origins, including persons with a background in human rights law, representatives of non-governmental organizations, legal practitioners, and family members of prisoners and detainees.

16. In mid-December 1999, in the framework of the Commission on Prisoners and Detainees, OHCHR brought representatives of Kosovo Serbs and Kosovo Albanians together for the first time with representatives of KFOR and UNMIK to discuss the fate and whereabouts of persons deprived of liberty as a result of the Kosovo conflict.

17. OHCHR regularly visits places of detention in Serbia and Montenegro and monitors trials in various court districts. The OHCHR teams include persons with expertise in international standards of detention as well as domestic law and procedure. Hundreds of interventions have been made based on the humanitarian or legal situations of individual detainees in prisons under Ministry of Justice jurisdiction. According to Kosovo Albanians recently released, detainees have often suffered mistreatment while in Serbian custody, especially in Kosovo during the NATO campaign, while poor health conditions and overcrowding are common in almost all detention centres. Families visiting detained relatives have reportedly been harassed by officials at checkpoints and detention centres. OHCHR has also been able to confirm that large sums of money have been paid in many cases for the release of prisoners and detainees. The solicitors of the payment frequently indicate that they will collect the money when the detainee is released. Some released prisoners have told OHCHR that ill-treatment and, in one case, torture ceased

after OHCHR's first visit and never resumed. However, there have been reports of continued ill-treatment at Sremska Mitrovica prison, even after visits by OHCHR and ICRC.

18. In December 1999, OHCHR visited all Serb, Roma and Kosovo Albanian detainees held in the prison at Mitrovica administered by KFOR/UNMIK. The detainees indicated that, in general, conditions had improved, but delays in judicial proceedings in several cases are still a matter of concern. OHCHR has discussed this with UNMIK and, where relevant, local courts. In this connection, UNMIK adopted, on 22 December 1999, regulation No. 1999/26 providing for extension of detention beyond the six months previously permitted.

19. OHCHR and ICRC have not so far obtained access to places of detention of persons kidnapped or abducted on the territory of Kosovo. In efforts to obtain information on the fate and whereabouts of persons who have been abducted, OHCHR has obtained assistance from non-State actors, international agencies, family members, neighbours and other individuals. In some cases, persons acting in good will to assist the families of missing persons have expressed fears for their own security. Despite intensive inquiries, OHCHR has not so far been able to determine the fate and whereabouts of kidnapped and missing persons.

III. ESTABLISHMENT OF THE RULE OF LAW

20. Establishment of the rule of law in Kosovo remains a great challenge for UNMIK and KFOR. As of 1 March 2000, UNMIK had filled 2,361 posts, or some 65 per cent of the total authorized strength of 3,618 international civilian police posts (not including the 1,100 authorized police officers in special police units).[4] The SRSG in Kosovo, Dr. Bernard Kouchner, has reiterated calls for contributing States to expedite, as a matter of urgency, the full deployment of international police and to allocate the necessary resources to investigate serious crime.

21. UNMIK has meanwhile proceeded to fill several hundred judge and prosecutor positions with Kosovars in the newly formed Kosovo judiciary. A second round of recruitment for 100 more judges and prosecutors was expected to begin in March, bringing the total of appointed judges to around 400. Efforts to redress the ethnic imbalance in the composition of the judiciary have been hampered by security concerns and reported intimidation. The OSCE reports that some judges and prosecutors have suffered harassment, threats and even attacks.[5] UNHCR and OSCE also report a low rate of prosecutions of ethnic Albanians for acts of violence committed against minorities.[6]

22. In response to the dramatic escalation of violence in the town of Mitrovica in February, the SRSG adopted emergency measures to re-establish security and fill the judicial vacuum in the ethnically divided town. Regulation No. 2000/6 of 15 February provided for implementation of these measures and the immediate appointments of an international judge and prosecutor, to work alongside Kosovar judges.

23. There has been concern over the refusal of judicial officials to apply Yugoslav law as decreed by UNMIK regulation No. 1999/1. The SRSG has attempted to redress the problem by

way of regulation 1999/24 of 12 December 1999, ruling that the applicable law shall be the law in force in Kosovo on 22 March 1989 and that all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards.

24. There is cause for encouragement in the progress which has been made, through the efforts of UNMIK, the OSCE, the Council of Europe and others, towards the establishment of an ombudsman institution for Kosovo. A draft regulation on this question is currently being considered.

25. The High Commissioner welcomes the recommendations made in December 1999 by the SRSG on the establishment of a Kosovo Court which would be able to prosecute persons suspected of committing war crimes or serious crimes committed on the basis of a person's ethnicity, religion or political beliefs. Judges and prosecutors for the court are expected to come from Kosovo and abroad.

IV. PROMOTING A HUMAN RIGHTS CULTURE

26. The Kosovo Human Rights Conference, held in Pristina on 10 and 11 December 1999, gathered representatives of intergovernmental and non-governmental organizations, human rights experts and activists from abroad and the region. The Deputy High Commissioner represented the Office of the High Commissioner for Human Rights. The event, which coincided with Human Rights Day, was marked by the participation of persons belonging to different ethnic groups who had the opportunity to express their views in a free and democratic context. The High Commissioner welcomed the adoption of a final declaration calling for the promotion of peaceful coexistence, tolerance, establishment of the rule of law and a strengthened judiciary in a human rights-oriented society. At the same time, the Pristina-based NGO Council for the Defense of Human Rights and Freedoms held an international human rights conference to celebrate its many years of work.

27. More recently, an inter-religious meeting took place in Bosnia-Herzegovina, at which Kosovo religious leaders made a declaration concerning shared moral commitment. The Mufti and President of the Islamic Community, the Serbian Orthodox Bishop of Raska and Prizren and the Bishop of the Roman Catholic Church of Prizren jointly condemned all violence against innocent persons and any form of abuse or violation of fundamental human rights.

V. RECOMMENDATIONS

A. Security concerns and the rights of minorities

28. The High Commissioner stresses the responsibility of all parties to create a secure environment in Kosovo that will allow minority groups, refugees and internally displaced persons to return, and to allow all those who wish to remain in Kosovo a genuine possibility to do so, irrespective of their ethnic origin.

29. The present cycle of violence and discrimination against minorities has to be brought to an end, if the rebuilding and renewal process in Kosovo is to be effective. Local leaders and communities must be persuaded to use their influence to stop violence and impunity.

30. The leaders of Kosovo communities must make greater efforts to translate their calls for tolerance and coexistence into concrete action. As observed by the OSCE, UNHCR and others, such actions should include strong condemnation of all attacks on minorities, mobilization of community support against such actions, identification of those responsible, encouragement of witnesses to come forward, suggestion of ways to prevent recurring attacks and ensuring freedom of movement for everyone in Kosovo.

31. Minority groups and the majority should be assured that their interests will be taken into account, and their claims adjudicated or mediated in a fair and impartial manner, in all aspects of social, economic and cultural life in the region.

B. Prisoners and detainees

32. The High Commissioner calls for the unconditional release of all political prisoners and detainees not charged with war crimes or common criminal activities. This step would greatly contribute to ending violence and facilitating the process towards peaceful coexistence.

33. The matter of persons deprived of liberty as a result of the Kosovo crisis should be maintained on the agenda of all authorities - international, national and local. It should be pursued from a humanitarian and human rights perspective, addressing the need for resolution of all prisoner, detainee and missing person issues, regardless of ethnicity or political affiliation of victim or detaining party. Such efforts should enjoy the expressed support of multilateral, regional, and non-governmental organizations as well as Governments.

34. All international organizations involved in activities related to persons deprived of liberty as a result of the Kosovo conflict should work to strengthen their cooperation, including exchange of information where consistent with their mandates.

35. The Governments of the FRY, Serbia and Montenegro, the Serbian Orthodox Church, non-governmental organizations, the Kosovo Albanian and Kosovo Serbian leadership and local community leaders should be urged to cooperate with the Commission on Prisoners and Detainees and to respond to inquiries from OHCHR and other relevant organizations.

36. All State and non-State authorities holding detainees should release all relevant information they possess: names, places of detention and conditions under which detainees were deprived of liberty.

37. All State and non-State authorities holding detainees should immediately permit access by OHCHR, ICRC, attorneys, family members and physicians to persons at their places of detention.

38. International and regional human rights mechanisms, including relevant mechanisms of the Commission on Human Rights, should be employed wherever possible to address the situation of persons arbitrarily detained, subjected to torture and ill-treatment, or otherwise subjected to violations of international human rights and humanitarian standards.

C. Establishment of the rule of law

39. The High Commissioner urges contributing States to provide, as a matter of the highest priority, for the full deployment of United Nations civilian police and the strengthening of the multi-ethnic local police force throughout Kosovo as a key step in guaranteeing respect for law and order and creating a safe environment for all inhabitants of Kosovo.

40. Support should be given to the call by the OSCE for contributing States to provide UNMIK with increased financial, technical and human resources to fund, train and support an independent and multi-ethnic judiciary to ensure that the Kosovo justice system can function effectively. Support should also be given to the creation of an ombudsman institution.

41. The High Commissioner appeals to the leaders of the Kosovo communities to use their influence to ensure the independence and the impartiality of the newly established judiciary.

42. The High Commissioner calls on contributing States to provide OHCHR with enhanced resources to carry out functions including the monitoring of judicial processes in Kosovo and treatment of prisoners and detainees throughout the FRY.

D. Promoting a human rights culture

43. Initiatives for the development of peaceful coexistence and tolerance should have the highest priority in Kosovo. Human rights should be promoted throughout public administration, at all levels of education, and among professional and religious communities. An important role should be played by civil society, including women's organizations, youth groups and associations of the elderly. These groups, who were - and still are - victims of human rights violations, can make a substantial contribution to the promotion of a human rights culture.

44. The issue of impunity must be addressed fairly and impartially. All individuals, regardless of ethnicity or official rank or capacity, directly involved in the practice of so-called "ethnic cleansing" or other serious violations of human rights and humanitarian law should appear before a competent court and be judged. The lack of accountability for such crimes will only encourage perpetrators, fuel resentment and perpetuate the cycle of violence.

Notes

[1] Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (S/2000/177, 3 March 2000).

[2] UNHCR/OSCE, "Assessment of the Situation of Ethnic Minorities in Kosovo", 11 February 2000, p. 3.

[3] International Committee of the Red Cross, "Missing persons from the Kosovo crisis: ICRC response", Geneva, Switzerland, 24 February 2000.

[4] S/2000/177, Supra note 1.

[5] OSCE Report 2, The Development of the Kosovo Judicial System, 17 December 1999: "In November, the President of the Court in Mitrovica had his car stoned ... [and] the Chief Prosecutor in Pec was threatened that if th.ee detainees were not released, he would be executed ..."

[6] UNHCR/OSCE, Supra note 2.

UNITED
NATIONS

E

Economic and Social
Council

Distr
GENERAL

E/CN 4/2000/33
10 January 2000

Original ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in Afghanistan submitted by Mr. Kamal Hossain, Special Rapporteur, in accordance with Commission resolution 1999/9

GE.00-10045 (E)

CONTENTS

		Paragraphs	Page
Executive summary			3
Introduction		1 - 4	6
I.	ACTIONS AIMED AT PROMOTING A PEACE PROCESS	5 - 24	7
II.	RESUMPTION OF CONFLICT: CENTRAL HIGHLANDS (MARCH 1999), SHAMALI PLAINS AND NORTH-EAST (JULY 1999), BAMYAN IN THE CENTRAL HIGHLANDS (MARCH 1999)	25 - 36	11
III.	GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW RESULTING FROM RESUMPTION OF CONFLICT	37 - 40	13
IV.	TESTIMONY OF REFUGEES AND INTERNALLY DISPLACED PERSONS	41 - 49	14
V.	IMPACT ON OVERALL HUMAN RIGHTS SITUATION OF CONTINUING CONFLICT	50	16
VI.	DEVASTATED ECONOMY AND CONTINUED DEPRIVATION OF SOCIAL AND ECONOMIC RIGHTS AND DETERIORATION IN THE SITUATION OF THE RIGHTS OF WOMEN	51 - 53	17
VII.	CONCLUDING OBSERVATIONS AND RECOMMENDATIONS	54 - 61	19

Executive summary

This is the third report of the Special Rapporteur. He presented his first report (E/CN.4/1999/40) to the Commission on Human Rights at its fifty-fifth session in March 1999. He submitted an interim report (A/54/422) to the Third Committee of the General Assembly at its fifty-fourth session on 4 November 1999.

The first report had been made following a visit to Kabul, and to Islamabad and Peshawar, where Afghan refugee groups were interviewed in March 1999. The interim report to the General Assembly was preceded by a visit to Quetta and Kandahar in May 1999 and to Kabul and Islamabad in September 1999. Following receipt of allegations of serious human rights violations which were occurring as a result of resumption of conflict in the central highlands in Afghanistan, in particular in Bamyan, in May and in the Shamali Plains north of Kabul in July 1999, the Special Rapporteur's visits were aimed at gathering first-hand information. In May, he interviewed newly arrived refugees and displaced persons, mostly women and children from Hazarajat. In Kabul, he was able to interview persons who had been forcibly displaced from the Shamali Plains in July 1999. The visit to Kabul was undertaken together with the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, who will deal with the issues related to women's rights in some detail in her separate report.

The Special Rapporteur pointed out that the people of Afghanistan continued to be victims of gross violations of human rights and persistent breaches of international humanitarian law. The basic cause of this was that the people of Afghanistan continued to be virtual hostages in their own land, where externally armed forces sought to rule Afghanistan without the effective participation or consent of the people. The most fundamental denial of human rights which needed to be addressed was that of the right of the people of Afghanistan effectively to participate in the governance of their country through freely chosen representatives, recognized in article 21 of the Universal Declaration of Human Rights and elaborated in article 26 of the International Covenant on Civil and Political Rights, to which Afghanistan is a party.

The critical importance was underscored of initiating a peace process, a process of transition from the present rule by armed groups (externally supported) to a broad-based multi-ethnic, representative government which enjoyed the confidence of all segments of the Afghan population, including a significant proportion of the several million Afghan refugees forced to live outside Afghanistan.

Fighting between the Taliban and the United Front (UF) had ebbed and flowed during the period under review without resulting in significant changes to the territory held by either party. After a further massive loss of human lives, increased suffering of the civilian population and immense physical destruction, the two sides found themselves roughly in the same positions they held in late 1998.

Following the receipt of allegations of serious human rights violations being committed in the central highlands of Afghanistan, particularly in Bamyan, the Special Rapporteur had decided to seek first-hand information and visited Quetta in May 1999 to interview newly arrived refugees from Hazarajat. The violations of human rights which were reported to him by

credible eyewitnesses included forced displacement of the civilian population; deliberate burning of houses, summary executions of non-combatants, including women and children; arbitrary detention; and forced labour. All of these practices constitute grave human rights violations. The actions, reportedly carried out by Taliban forces who were engaged in military operations, ran directly counter to assurances publicly given by the Taliban leadership with regard to the rights of the civilian population. The Special Rapporteur had then travelled to Kandahar and met Mawlavi Wakeel Ahmed Mutawakil, Special Adviser to the Taliban leadership, to draw their attention to the pattern of gross violations, which was summarized in an aide-mémoire delivered by the Special Rapporteur on 23 May 1999. Specific actions were requested to be taken in order to prevent further violations and to protect and reassure the civilian population affected. An adequate and effective response is still awaited. The Special Rapporteur has made repeated requests to visit Bamyan but these requests have not elicited a positive response.

The level of fighting reached an unprecedented scale for 1999 when the Taliban launched a major ground and air offensive against the United Front on 28 July. The offensive, which Taliban leaders called a decisive battle to defeat UF, not only shattered the hopes for peace raised at the Tashkent meeting of the "Six plus Two" group, but also added further problems to the already grave humanitarian and human rights implications of the offensive. The Taliban offensive in the Shamali Plains and the North-East resulted in massive involuntary and forced displacement of the civilian population, in particular women and children. Widespread first-hand reports indicated that there were house and crop burnings, forced deportations, family separations, the separation and deportation of women, and arbitrary killing in southern Shamali. The Special Rapporteur addressed an appeal to the Taliban authorities on 4 August 1999 and to the Northern Alliance on 5 August 1999 pointing out the dangers to which the resumed conflict was exposing the civilians and should be avoided. The texts of those letters were appended to the interim report submitted to the General Assembly last November.

The Human Development Index ranks Afghanistan amongst the lowest in the world and the Gender Disparity Index, a composite index based on the measurement of female life expectancy, educational attainment and income ranks it the lowest in the world (UNDP, Human Development Report, 1995). Afghanistan's formal economy stands devastated as a result of two decades of armed conflict. According to a 1997 World Bank report, the country's economy is currently reliant on "subsistence agriculture, unofficial transit trade, war-related financial flows, drug income and international assistance".

The Special Rapporteur quoted the Secretary-General's latest report to the General Assembly on Afghanistan (A/54/536-S/1999/1145) which reported as follows: "In 1999, Afghanistan became by far the world's largest illicit producer of opium, with its output reaching up to 75 per cent of all illicit opium worldwide. According to this year's annual poppy survey conducted by the United Nations International Drug Control programme (UNDCP), opium production is estimated to reach a record level of 4,600 metric tons, which could potentially be converted into 460 metric tons of heroin."

A conjuncture of developments has created an opportunity for a bold initiative to adopt coordinated measures which will truly address the root causes responsible for the appalling human rights situation in Afghanistan. The fundamental aim must be to restore Afghanistan to all of its people, through reviving and sustaining a peace process, a process of transition which

will fill in the constitutional and political vacuum in which externally supported armed groups impose arbitrary rule without the consent or participation of the Afghan people, violating their human rights. In this context, the recent Loya Jirgah (grand assembly) initiative provides a means for active and purposeful consultations among all Afghan people and the warring groups - the Taliban and the United Front - who may well be persuaded by the United Nations, and the "Six plusTwo" group to participate in these consultations. These consultations could aim to devise a transition process which would provide agreed procedures for establishing a broad-based, multi-ethnic, truly representative government.

It should be noted, as does a recent study that pervasive human rights problems are both a cause and consequence of the governance crisis. The character of the existing authorities, who rule without the consent and participation of the Afghan people, is the root cause of human rights violations, ranging from imposition of "edicts" which provide for systematic gender discrimination, to inflicting cruel, degrading and inhuman punishment and maintaining authoritarian rule. The focus thus needs to shift from incremental changes to a framework change.

The time may indeed be propitious for giving the highest priority to making a concerted effort to achieve a framework change in Afghanistan. The circumstances which encourage this view include changes in the neighbouring countries, the recent discussions among them, the meetings between the Taliban and their neighbours, the release of several hundred opposition prisoners by the Taliban, and the resolve expressed within the United Nations for positive action. All these, taken together, present an opening which should not be missed.

Introduction

1. This is the third report of the Special Rapporteur. He presented his first report (E/CN.4/1999/40) to the Commission on Human Rights at its fifty-fifth session in March 1999. He submitted an interim report (A/54/422) to the Third Committee of the General Assembly at its fifty-fourth session on 4 November 1999.

2. The first report had been made following a visit to Kabul, and to Islamabad and Peshawar, where Afghan refugee groups were interviewed in March 1999. The interim report to the General Assembly was preceded by a visit to Quetta and Kandahar in May 1999 and to Kabul and Islamabad in September 1999. Following receipt of allegations of serious human rights violations which were occurring as a result of resumption of conflict in the central highlands in Afghanistan, in particular in Bamyan, in May and in the Shamali Plains north of Kabul in July 1999, the Special Rapporteur's visits were aimed at gathering first-hand information. In May, he interviewed refugees, including women and children recently arrived from Hazarajat. In Kabul, he was able to interview persons who had been forcibly displaced from the Shamali Plains in July 1999. The visit to Kabul was undertaken together with the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, who will deal with the issues related to women's rights in some detail in her separate report.

3. The Special Rapporteur, drawing upon earlier reports of special rapporteurs and his own observations and information gathered in the course of his visits referred to above, had pointed out that the people of Afghanistan continued to be victims of gross violations of human rights and persistent breaches of international humanitarian law. The basic cause of this was that the people of Afghanistan continued to be virtual hostages in their own land, where externally armed forces sought to rule Afghanistan without the effective participation or consent of the people. The most fundamental denial of human rights which needed to be addressed was that of the right of the people of Afghanistan effectively to participate in the governance of their country through freely chosen representatives. This is the right recognized in article 21 of the Universal Declaration of Human Rights, namely that "the will of the people shall be the basis of the authority of government" and that "this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage, and shall be held by secret voting or equivalent free voting procedures", and elaborated in article 26 of the International Covenant on Civil and Political Rights, to which Afghanistan is a party.

4. The critical importance was underscored of initiating a peace process, a process of transition from the present rule by armed groups (externally supported) to a broad-based multi-ethnic, representative government which enjoyed the confidence of all segments of the Afghan population including a significant proportion of the several million Afghan refugees forced to live outside Afghanistan.

I. ACTIONS AIMED AT PROMOTING A PEACE PROCESS

From Ashkabad to Tashkent (February to July 1999)

5. Following discreet efforts in late January and early February by the Special Mission and certain neighbouring countries to persuade the two Afghan warring sides to meet, an initial meeting of Taliban and United Front (UF) representatives took place in Ashkabad, Turkmenistan, on 10 and 11 February 1999. The two sides agreed in principle that there should be a further round of talks leading to agreement on a ceasefire, prisoner exchange and future government. This second round of intra-Afghan talks took place from 11 to 14 March in Ashkabad, again under the auspices of the United Nations. At the end of the three-day meeting, both sides reached a framework agreement to, in principle, form a shared executive, a shared legislature and a shared judiciary. They also agreed to continue the talks, after the religious holiday of Eid Al-Adha, preferably inside Afghanistan. Unfortunately, those talks were never held as the parties lapsed into mutual recriminations.

6. At the invitation of the Government of Uzbekistan, the Deputy Ministers for Foreign Affairs of the members of the "Six plus Two" group had met in Tashkent on 19 and 20 July 1999. The Secretary-General's Special Envoy for Afghanistan, Mr. Lakhdar Brahimi, had participated in the meeting, and Taliban and UF representatives were invited as observers and met each other for the first time since the Ashkabad talks in March 1999.

7. The meeting had adopted the "Tashkent Declaration on Fundamental Principles for a Peaceful Settlement of the Conflict in Afghanistan" (A/54/174-S/1999/812). In the Declaration, the members of the group reiterated their commitment to a peaceful political settlement of the Afghan conflict and called for the resumption of peace talks between the Taliban and the United Front. The members of the group, for the first time, publicly committed themselves to do what the Security Council had repeatedly been urging, namely, not to provide military support to any Afghan party and to prevent the use of their respective territories for such purposes. The group, as well as the Secretary-General's Special Envoy, made strong appeals to the Taliban and the UF to refrain from launching any major new military offensives.

8. On 18 August 1999, the Government of Pakistan announced an initiative being undertaken by it in response to an appeal by Professor Rabbani to the Prime Minister of Pakistan, to facilitate reconciliation between the contending Afghan parties, but no positive outcome was achieved.

The Loya Jirgah initiative (April to November 1999)

9. The Loya Jirgah (grand assembly) is an institution which has historically been convened by successive regimes to obtain popular ratification of constitutions. This was true in the case of the 1964 Constitution promulgated under King Zahir Shah as well as the constitution promulgated under President Daud in 1977. The Taliban representative who informed the Special Rapporteur that a draft constitution is being prepared acknowledged that a Loya Jirgah was the institution which had traditionally been convened for ratification of constitutions.

10. A constitutional vacuum exists in Afghanistan. The fact that the Taliban themselves recognize the need for a constitution to be drawn up underlines the need to develop an inclusive process which would enable all segments of the Afghan population to participate in working out an acceptable constitutional framework and procedures for its acceptance and approval by the Afghan people. It is in this context that the first of a series of steps taken by the former King of Afghanistan, Mohammad Zahir Shah, acquires special significance.

11. On 29 April, the former King of Afghanistan, Zahir Shah, had announced an initiative whereby a group of 30 Afghan political figures would meet in Rome to prepare for the convening of a Loya Jirgah. The King's initiative was welcomed by a broad range of Afghan groups. An initial preparatory meeting took place on 25 June. The Taliban, although invited, did not attend. The group decided to form a preparatory council to develop the initiative and to launch a campaign within the region to explain the initiative and rally support for it. The organizers of the Loya Jirgah initiative held a further preparatory meeting in Rome in November. The 77 participants invited to this meeting were drawn from a wide range of the Afghan population, including persons of different ethnic and social groups as well as women. The Secretary-General of the United Nations sent an observer to the meeting. Representatives from France, Germany, Iran, Japan, Pakistan, the Russian Federation, Saudi Arabia, Switzerland, Turkey, the United Kingdom and the United States were also present.

12. The opening session called for an immediate end to the war and to foreign interference. The group called for an active United Nations role to bring about such a change. It also agreed that the Emergency Loya Jirgah (comprised of both men and women) is the most effective mechanism for resolving the Afghan conflict and that it should be held in Afghanistan. Within the next six months, the following steps for the convening of the Emergency Loya Jirgah were agreed upon:

- To ensure international support for the convening of the Emergency Loya Jirgah, delegations should be sent to the United Nations, neighbouring countries, the United States, member States of the European Union, the Organization of the Islamic Conference and other international bodies and governments to explain the outcome of the meeting, and to seek their cooperation with and participation in the Emergency Loya Jirgah;

- To seek the cooperation of the main warring parties (i.e. the Taliban and the United Front) for the convening of the Emergency Loya Jirgah in Afghanistan, delegations should be sent to discuss the organization modalities and to invite their participation and cooperation;

- To mobilize support among those Afghans, both inside and outside Afghanistan, not directly involved in the war; the opening of offices should be considered in Pakistan and Iran, in cooperation with the respective governments. Similarly, supportive networks should be established in Afghanistan and around the world;

- To implement the decisions of the Organizing Committee, an executive council will be established, and the Rome office will be strengthened.

Other meetings of Afghan groups

13. Other meetings were held by non-belligerent Afghan political groups in locations outside Afghanistan to explore a peaceful solution to Afghanistan's problems, but have had little support from the contending parties in Afghanistan. A prominent Afghan figure involved in these peace efforts was the victim of an assassination last July. Abdul Ahad Karzai, once a deputy speaker of the Senate and a supporter of the ex-King, was gunned down in Quetta, only days after he arrived from the United States.

Reorganization of the United Front and the Taliban

14. Before the peace talks in Ashkabad, the United Front consolidated the anti-Taliban forces, politically and militarily, under a single, unified command. A 40-member Leadership Council, headed by Professor Rabbani, and a separate Supreme Military Council were established. The United Front also announced its intention to form a 150-member assembly or shura in non-Taliban areas, shortly before the opening of the fifty-fourth session of the United Nations General Assembly. The United Front announced the formation of a 10-member Political Committee, as well as a ministerial cabinet reshuffle aimed, it said, at giving a broader representation from Afghanistan's four major ethnic groups, namely the Pashtoon, Tajik, Hazara and Uzbek communities.

15. The Taliban administration under Mullah Omar, announced re-organization, under which responsibility for information, interior and foreign affairs were entrusted to particular members of the leadership. The declared objective of these changes was to improve efficiency and discipline. The Taliban representatives also reported that the preparation of a draft constitution was under way.

The efforts of the Special Envoy of the Secretary-General (December 1998 to August 1999)

16. The Secretary-General's Special Envoy undertook three missions to the region - to the Islamic Republic of Iran and Pakistan for consultations with leaders of the respective Governments and others (December 1998), to Afghanistan, and to Saudi Arabia, Pakistan, the Islamic Republic of Iran, the Russian Federation, Uzbekistan, Tajikistan and Turkmenistan (February to March 1999). He met with the Taliban supreme leader, Mullah Mohammad Omar, in Kandahar, and went to Kabul twice for talks with the Taliban leadership there. He also had two meetings with Commander Ahmad Shah Massoud, in Dushanbe and Taloqan.

17. During his first two missions, the Special Envoy had urged the parties to settle their differences by peaceful means and, to that end, to resume the intra-Afghan talks started in Ashkabad. He had suggested a wide range of confidence-building measures, including agreement on a permanent cease-fire, the exchange of prisoners of war and the appointment of military liaison officers. He had also repeatedly underlined the importance for the neighbours of Afghanistan, in particular, the Islamic Republics of Iran and Pakistan to engage in frank and serious discussions on their mutual concerns.

18. In July 1999, the Special Envoy represented the United Nations at the Tashkent meeting of the "Six plus Two" group and visited Kabul and Islamabad. He repeated his proposals for confidence-building measures while speaking to the Taliban and United Front delegations in Tashkent. He also helped bring the two sides together for a private meeting.

19. In Tashkent and at his subsequent meetings in Kabul in July, the Special Envoy made strong appeals to leaders of the contending sides, including Mullah Mohammad Rabbani, not to launch a military campaign, in keeping with the spirit of the Tashkent Declaration. The point was made that in a multi-ethnic country like Afghanistan, peace could only be achieved through reconciliation among its people and with its neighbours. The conquest of territories, however extensive, would never succeed in bringing about a lasting peace.

20. Upon his return to Islamabad on 25 July, the Special Envoy continued his last-minute attempt to avert the Taliban offensive, which by then appeared imminent. Despite these calls the offensive began in the early hours of 28 July, with massive operations in the Shamali Plains, north of Kabul.

UNSMA efforts to promote peace

21. Through the year, the United Nations Special Mission to Afghanistan (UNSMA) performed the three essential roles encompassed by its mandate: (a) to support the Special Envoy in promoting peace through contact with the two contending sides as well as through the wider Afghan political and civil community; (b) to monitor and report political and military developments in Afghanistan; and (c) to coordinate activities with the Office of the United Nations Coordinator for Afghanistan as well as the indigenous and international humanitarian assistance community.

22. The mediation efforts of the Special Mission gathered pace in early 1999 following some fruitful discussions between the Mission and the leadership of the contending sides. These discussions contributed greatly to the two rounds of talks between senior Taliban and UF representatives in Ashkabad.

23. The preparations for the Civil Affairs Unit within UNSMA, which was proposed following the massacres and the gross human rights violations after the retaking of Mazar-I-Sharif by the Taliban forces in August 1998, seen as a means of deterring such violations in the future, are reported to be well advanced.

24. An UNSMA-led assessment mission in late April/early May received the agreement of the contending Afghan sides to the Unit's operations inside Afghanistan. The Civil Affairs officers are scheduled to take up their posts in time for deployment starting early 2000.

II. RESUMPTION OF CONFLICT: CENTRAL HIGHLANDS (MARCH 1999), SHAMALI PLAINS AND NORTH-EAST (JULY 1999), BAMYAN IN THE CENTRAL HIGHLANDS (MARCH 1999)

25. With the advent of spring, conflict resumed in the Hazarajat in the central highlands. Hazarajat is populated mostly by Hazaras. Bamyan city had been the stronghold of Hezb-e Wahdat up to September 1998, when they had been defeated by the Taliban. It was reported that while leaving the city Hezb-e-Wahdat forces had killed 30 Taliban prisoners who were being held in Bamyan prison. Reports further indicated that during its rule of Hazarajat, and particularly in Bamyan, Hezb-e-Wahdat had failed to maintain law and order and the behaviour of its forces towards Tajiks living in Bamyan, Kohmand and Saighan districts had forced a large number of Tajiks to leave Bamyan during 1996-1997.

26. The Taliban entered Bamyan city for the first time on 13 September 1998 after a short period of fighting in Aghrubut pass. From 15-17 September, the Taliban had launched a search in Bamyan villages for "suspected people". During the search they had reportedly arrested people who were taken to the desert and, reportedly, a number of them were summarily executed. Sarasiab, Haiderabad and Syedabad villages were among the villages which suffered the most.

27. Hezb-e-Wahdat forces secured control of Bamyan for three weeks. It was reported that during that time they arrested 11 drivers and 25 passengers in vehicles passing through Bamyan on the road from Behsood, because of their ethnicity. The captives were released by the Taliban on 9 May when they recaptured Bamyan.

28. The retaking of Bamyan by the opposition had been considered a big setback by the Taliban. The Taliban massed 4,000 troops to recapture Bamyan. The operation was led by high-ranking commanders of the Taliban, including Maulavi Abdul Kabir, deputy to the acting Shura, Mullah Akhund, head of the East-West zone, Mullah Fazal Akhund, chief of the military corps, and Mullah Abdul Wahid Ghorbandi, a front-line commander.

29. The Taliban retook Bamyan on 9 May 1999. Upon their entering Bamyan city, there were reports of summary executions. Most of the population evacuated the city and took refuge in the mountains. They were facing a serious situation given the weather in the cold mountainous areas and the acute shortage of food. It was reported that a group of 150 people, including women and children, were taken captive by the Taliban from Berson village and transferred to Parwan province.

30. Fighting between the Taliban and the United Front (UF) had ebbed and flowed during the period under review without resulting in significant changes to the territory held by either party. After a further massive loss of human lives, increased suffering of the civilian population and immense physical destruction, the two sides found themselves roughly in the same positions they held in late 1998. Dr. Ayub, the Medical Director of Shuhada, an independently funded humanitarian agency, was arrested and detained in jail without charges, where he still remains, despite repeated appeals for his release.

Major Taliban offensive in the Shamali Plains and the North-East (July 1999)

31. The level of fighting reached an unprecedented scale for 1999 when the Taliban launched a major ground and air offensive against the United Front on 28 July. The offensive, which Taliban leaders called a decisive battle to defeat UF, not only shattered the hopes for peace raised at the Tashkent meeting of the "Six plus Two" group, but also added further problems to the already grave humanitarian and human rights implications of the offensive as described below.

32. In addition to the existing troops, the Taliban offensive was believed to have been reinforced by between 2,000 to 5,000 new recruits, many of them non-Afghans, who had apparently crossed the borders to join the civil war in Afghanistan. The Taliban offensive was successful at the initial stages, leading to the quick capture of most of the Shamali Plains, north of Kabul, up to the entrance of the Panjshir Valley, as well as areas close to the Amu Darya (Oxus) river. However, on 5 August, United Front forces counter-attacked and retook virtually all the territory lost to the Taliban in the previous week.

33. On 11 August, the Taliban regrouped and launched a new attack from the front line north of Kabul, advancing cautiously and securing the terrain through the forced displacement of the civilian population and the destruction of houses and the agricultural infrastructure. The Taliban established a new front line some 50 kilometres north of Kabul, running from the "old Kabul road" north of Qarah Bagh, traversing Bagram airbase and the Kohi Safi Mountains, to a point in the vicinity of Nijrab. The United Front, meanwhile, opened new areas of conflict, in an effort to reduce pressure on their forces and draw away some of the Taliban's superior numerical strength, during which UF made some minor territorial gains, mainly in the south-eastern region.

34. In September, the Taliban stepped up their pressure on UF positions in northern Afghanistan, north of Kunduz city and, to the east, Khanabad town in Takhar province. For their part, UF kept up their diversionary attacks in the North-West and the South-East of the country. On 25 September, the Taliban launched a major offensive in northern Kunduz province, close to the border with Tajikistan. They pushed through Baghi, east of Khanabad town, and threatened to take Taloqan, capital of Takhar province and one of Commander Ahmad Shah Massoud's main command and control centres. The Taliban air force intensified its aerial bombing causing a considerable number of civilian casualties, damage to property and population exodus.

35. By late October, however, the United Front had once again driven the Taliban back to their starting positions. Intermittent fighting has continued in the west in Herat, Ghor and Farah Provinces. In early November, UF claimed that its forces had made further advances in northern provinces of Samangan and Sar-e-Pul.

36. The conflict had thus further spread to the Kunduz and Takhar Provinces, including widespread destruction in Khwaja Ghar (September-October) and Dara Souf (July-October). Aerial bombardment by Taliban jets in the Bazarak area of Panjshir on 18 November 1999 resulted in killing 25 people and wounding scores of others. Aid agencies working in the valley reported that two cluster bombs had been dropped in the Bazarak area. One of the bombs hit a

school where internally displaced persons from Shamali near Kabul were settled, killing 24, including women and children. The second bomb hit a local bazaar and wounded at least 10 persons.

III. GRAVE BREACHES OF INTERNATIONAL HUMANITARIAN LAW RESULTING FROM RESUMPTION OF CONFLICT

Bamyan and the central highlands

37. Following the receipt of allegations of serious human rights violations being committed in the central highlands of Afghanistan, particularly in Bamyan, the Special Rapporteur had decided to seek first-hand information and visited Quetta in May 1999 to interview newly arrived refugees from Hazarajat. The violations of human rights which were reported to him by credible eyewitnesses included forced displacement of the civilian population, deliberate burning of houses, summary executions of non-combatants, including women and children, arbitrary detention, and forced labour. All of these practices constitute grave human rights violations. The actions, reportedly carried out by Taliban forces who were engaged in military operations, ran directly counter to assurances publicly given by the Taliban leadership with regard to the rights of the civilian populations. Some of the Taliban field commanders were named specifically. Those named included Abdul Wahid Ghorbandi.

38. The Special Rapporteur had then travelled to Kandahar and met Mawlavi Wakeel Ahmed Mutawakil, Special Adviser to the Taliban leadership, to draw their attention to the pattern of gross violations, which was summarized in an aide-mémoire delivered by the Special Rapporteur on 23 May 1999. Specific actions were requested to be taken in order to prevent further violations and to protect and reassure the civilian population affected. An adequate and effective response is still awaited. The Special Rapporteur has made repeated requests to visit Bamyan but these requests have not elicited a positive response.

Shamali Plains and the North-East

39. The Taliban offensive in the Shamali Plains and the North-East resulted in massive displacement of the civilian population, in particular women and children. The United Front claimed that some 250,000 civilians had been displaced from the Shamali Plains, which independent reports indicate is an overestimate. The bulk of them had sought refuge in the Panjshir Valley. Other estimates ranged from 65,000 to 150,000 of whom a substantial number (over 50,000) are reported to have been moved by the Taliban forces to Jalalabad and Kabul. According to a Taliban spokesman, Mullah Amir Khan Mutaqqi, some 1,800 families had been transported to Jalalabad (Sar Shahi Camp) and a similar number were to be allocated to them. Such movements were justified by stating that this was being done for their own security because "the opposition had used civilians and their homes as human shields". There is thus incontrovertible evidence of involuntary and forced displacement of large numbers of civilians, specially women and children. There are reports that dozens of trucks were seen, filled only with women and children separated from the male members of the family. There also does not appear to be any prospect of their early return, as there are reports that many of their homes have been destroyed and fruit-bearing trees have been cut down. Access to the area was not possible for personal verification, which would be attempted as soon as circumstances permit. The

Special Rapporteur addressed an appeal to the Taliban authorities on 4 August 1999 and to the Northern Alliance on 5 August 1999 pointing out the dangers to which the resumed conflict was exposing the civilians and should be avoided. The texts of those letters were appended to the interim report submitted to the General Assembly last November.

40. Widespread first-hand reports indicated that there were house and crop burnings, forced deportations, family separations, the separation and deportation of women, and arbitrary killing in southern Shamali. House burnings were reportedly worst in Istalif, Farza, Kalakan and Guldara with lesser levels in Qarabagh and parts of Bagram district. Two specific instances of killings were reported, one involving groups of 12, 9 and 13, while the other involved groups of 23 and 15. These took place in the Bagram area and involved male civilians. The reports of systematic destruction of property and agriculture by the Taliban forces in the Shamali Plains were denied by officials in Kabul who suggested that a protective strip of 200 metres on either side of the main road was being cleared. This was not, however, borne out by independent reports which noted that homes and villages far from any main road had also been destroyed.

IV. TESTIMONY OF REFUGEES AND INTERNALLY DISPLACED PERSONS

41. A survey of Afghan refugees who had left Afghanistan in the period extending from the end of 1998 to the third quarter of 1999 and of internally displaced persons who were interviewed provides the basis for findings of gross human rights violations summarized below.

1. Continuing denial to women of access to education, health and employment

42. The right to the freedom of movement of women continues to be severely curtailed, with little access to employment or education. The Taliban continue to enforce its edicts with unabated severity. The refugees related stories of the abduction of women, rape, infliction of the punishment of stoning, lashing and other forms of inhuman punishment.

2. Women's prisons

43. Women's prisons reportedly exist in Kandahar, Kabul, and Mazar-I-Sharif and possibly in Jalalabad. Many women from the Hazarajat and Bamyan regions (Hazaras), from Mazar-I-Sharif and Pul-I-Khumri regions in the North (Hazaras and Tajiks), and from the Shamali and Panjshir regions of the latest summer incursion (Tajiks) are reportedly held captive without official reason in these prisons.

3. Abduction and kidnapping of women and girls

44. When Taliban took over territory in central and northern Afghanistan, many Hazara and Tajik women and girls were abducted in the villages and taken directly from houses by force. Besides their policy of separating families, Hazara and Tajik women have been rounded up in trucks from Mazar-I-Sharif, Pul-I-Khumri and Shomali regions. Trafficking of women and girls to Kandahar, Jalalabad and Pakistan was reported. Women have been killed and maimed trying to escape from these trucks. One Afghan woman reportedly jumped from a truck with her two daughters as it was moving in order to escape. Most of these women have not returned to their

villages. Eyewitnesses have seen trucks and cars full of Afghan women on the road to Kandahar and to Pakistan. Many suspect that women and girls end up forced into prostitution.

4. Forced marriages to Taliban

45. Women from Kabul, Mazar-I-Sharif and Shamali regions have given accounts of many instances of forced marriages. Taliban reportedly enter houses in Kabul and in new territory they conquer and force the families of young girls and women to conclude a "Nikah" (marriage contract) and thus marry them to Taliban members or to give them a large sum of money instead. When families refuse, they take the women and girls away by force. Many families in the Shamali region have sent their daughters away with internally displaced persons who headed toward Kabul and refugees to Pakistan, fearing forced marriages and abduction by the Taliban.

5. Non-Afghans present in fighting alongside the Taliban

46. Many of the refugees reportedly encountered Urdu-speaking men in positions of authority during the fighting in the North as well as in Kabul and Kandahar. Many report that these non-Afghans (including Pakistanis and Arabs) are involved in human rights violations committed against women and ethnic minorities.

6. Forcible evacuation of Shia and Tajik families from Kandahar and surrounding areas

47. Shias and Tajiks, who were generally being accused of being associated with the truck-bomb explosion near Mullah Omar's residence in Kandahar, were told to quit their homes, leaving all their belongings behind.

7. Separation of families from central Afghanistan (Tajiks and Hazaras) and the Shamali Plains

48. New arrivals reported that not only are families separated (men from women, younger women and girls from the elderly) but all their possessions and material belongings were looted, and their houses and fields burned.

8. The Taliban edicts

49. A number of stories were related regarding summary enforcement of edicts. These included a report about the beating of women for infractions of the "chadari" (dress) requirement and of women rebelling by yelling at the Taliban and taking off and throwing the "chadari" (cloak). In some of these cases, a crowd came to the women's defence and the Taliban were unable to continue their harassment.

V. IMPACT ON OVERALL HUMAN RIGHTS SITUATION OF CONTINUING CONFLICT

50. The impact of renewed fighting has been assessed in a recent report entitled "Human Rights, Afghanistan - A Formidable Challenge", a paper prepared for an Afghanistan Support Group (ASG) meeting in Ottawa (December 1999) by the Office of the United Nations Coordinator for Afghanistan (29 November 1999), thus:

> "Events of recent months - a dramatic upsurge in fighting, brutal attacks on civilians, destruction of essential assets, rising food prices - have further undermined the well-being and coping mechanisms of those Afghans who are least able to exercise their rights. Unquestionably, the greatest threat to life is the continuing war and its impact on all aspects of Afghan society. The immediate, indirect, and accumulated effects of war continue to take a devastating toll on lives and livelihoods. This in turn weakens the ability of Afghans, and Afghan society as a whole, to address core human rights concerns. These include structural inequalities, the marginalization of particular groups including the inability of women and girls to participate fully in public life, and the need for representative and accountable governance mechanisms.
>
> "There is growing and disturbing evidence that armed conflict in Afghanistan is now chiefly directed against civilians. Non-combatants have always borne the brunt of the fighting but, increasingly, civilians are treated as 'the enemy'. Gross violations of human rights and humanitarian law include forced displacement, summary execution, abduction and disappearance of young women, use of child soldiers, the indiscriminate use of landmines, separation of menfolk from their families, arbitrary detention and forced labour. In addition, there has been systematic and widespread use of a scorched earth policy including the destruction of homes, livestock, agricultural produce, farming implements, sewing machines and other income-producing tools and equipment.
>
> "Growing pauperization and pitiful socio-economic conditions, that are intimately linked to the war and attendant underdevelopment, remain the strongest factors undermining or denying the right to life in Afghanistan. The country has some of the most alarming socio-economic indicators in the world. The level of infant and maternal mortality is one of the highest on the planet while literacy rates are among the lowest. Even though steady progress has been made in recent years in improving access to safe water supplies, diarrhoea still kills an estimated 85,000 children annually. Families which are most vulnerable, including female-headed households and those with no routine means of income, are adding to a growing army of destitute people who are often reduced to begging for survival.
>
> "From any perspective, the human rights situation in Afghanistan can only be described as daunting. An unholy combination of factors point to a formidable array of obstacles which need to be overcome before true progress on human rights is achievable. These include protracted armed conflict that is increasingly directed against civilians and their means of survival, external interests including the continuous supply of arms that help perpetuate the conflict, profound underdevelopment and widespread poverty coupled

with the erosion of societal norms and traditional coping mechanisms, and minimal possibilities for the participation of civilians in the political life of the country.

"The central task in Afghanistan today is to bring the war to an end, to nurture into being a political environment conducive to the achievement of equity, peace and justice, and to support the realization of socio-economic conditions essential for living a life of dignity and self-worth compatible with basic human rights precepts. In other words, progress on human rights cannot be divorced from all those factors that daily confront Afghans in their struggle to avoid the life-threatening impact of war, and to achieve such life-dependent and fundamental rights as the right to food, the right to shelter, the right to health, and the right to secure their own and their families' well-being."

VI. DEVASTATED ECONOMY AND CONTINUED DEPRIVATION OF SOCIAL AND ECONOMIC RIGHTS AND DETERIORATION IN THE SITUATION OF THE RIGHTS OF WOMEN

51. The current Afghan population is estimated at 20 million, including over 2.5 million male and female refugees in Pakistan and Iran, thousands of internally displaced families and more than 1 million war widows heading households. The Human Development Index ranks Afghanistan amongst the lowest in the world and the Gender Disparity Index, a composite index based on the measurement of female life expectancy, educational attainment and income ranks it the lowest in the world (UNDP, Human Development Report, 1995). Afghanistan's formal economy stands devastated as a result of two decades of armed conflict. According to a 1997 World Bank report, the country's economy is currently reliant on "subsistence agriculture, unofficial transit trade, war-related financial flows, drug income and international assistance". The annual assistance flow of around 200 million dollars has alleviated human suffering in the short run and prevented major humanitarian disasters but has not provided the foundation for sustainable development.

52. In a report entitled "The situation of women's health, education and income-generating employment in Afghanistan: A gender perspective" (November 1999), prepared for the Office of the Coordinator for Afghanistan, summarized the position as follows:

(a) Though cultural norms and traditions in Afghanistan have been historically conservative and characterized by strong division of gender roles, with decision-making roles being dominated by males, "increased access of women to education, health services and employment was part of State modernization projects at the beginning of the century and during the late 1970s. This led to growth in social demand for female education and created a female professional elite, mostly in the cities. With the Taliban takeover of the majority of the country, women's access to education, health and employment was extremely narrowed. This was further aggravated by the grim economic situation, the destruction of the social infrastructure and the absence of national policies for the rehabilitation of social sectors."

(b) Basic health indicators reflect the alarming health situation of Afghan women and children:

- life expectancy rates in Afghanistan are estimated at 44 years for women and 43 for men;

- Afghanistan has the second highest maternal mortality rate in the world. Every day about 45 women die of pregnancy-related causes resulting in over 16,000 maternal deaths annually;

- tuberculosis rates for women are among the highest in the world. There are approximately 133,000 tuberculosis cases, 70 per cent of which are females of the age of 15-45;

- infant mortality rate is 165 per 1,000 live births;

- one quarter of all Afghan children die before they reach the age of five;

- in most regions, the physician/population ratio is below one physician per 10,000 of the population;

- only 15 per cent of deliveries in Afghanistan are attended by trained health workers, most of whom are traditional birth attendants;

(c) The health situation of women and girls is further aggravated by the complete segregation in the provision of health services to males and females. This has enormously curtailed women's access to these services, especially when there is only a very small number of female doctors and trained nurses practising under severe restrictions in hospitals;

(d) Similar to the health sector, the education sector's hardware was destroyed by the war. The software of the sector was destroyed by the brain drain and segregation policies banning female teachers from working. Currently the education sector is characterized by limited human and financial resources, the absence of a national education policy and curricula at pre-university levels, the unpreparedness of the authorities to rehabilitate destroyed school buildings and facilities and the **discriminatory policies banning access of female students to all levels of education;**

(e) A recent World Bank workshop on education in Afghanistan (Islamabad, November 1999) concluded that even with the current restrictive environment, opportunities exist for expanding the education base for Afghan children requiring medium and long-term investment in human and financial resources in the education sector;

(f) The principled position of the United Nations system on equality of access of males and females to education has been a guiding principle in negotiations at all levels with the authorities. However, no significant progress in improving access and gender equality in formal education has yet been achieved. Home-based education for girls is still the only opportunity available to Afghan girls at present;

(g) The report of the United Nations Inter-Agency Gender Mission to Afghanistan (November 1997) had described the situation thus: "Generally, small income-generating projects are stop-gap measures, designed to fill employment and income gaps without providing the basis for sustainable livelihood; as such, female participants are neither part of mainstream of assistance projects, nor are they able to get footholds in future market place." This remains significantly unchanged, although some evidence suggests that there is a preliminary acceptance on the employment of women in agro-industrial cottage-type establishments employing groups of women and using some form of simple food-processing technology.

Illegal drugs

53. The Secretary-General's latest report to the General Assembly on Afghanistan (A/54/536-S/1999/1145) reported as follows: In 1999, Afghanistan became by far the world's largest illicit producer of opium, with its output reaching up to 75 per cent of all illicit opium worldwide. According to this year's annual poppy survey conducted by the United Nations International Drug Control Programme (UNDCP), opium production is estimated to reach a record level of 4,600 metric tons, which could potentially be converted into 460 metric tons of heroin. In 1999, an estimated 90,983 hectares were under opium poppy cultivation. This represents an increase of 43 per cent over the previous year. Opium poppy cultivation has now spread to 104 districts in Afghanistan, compared to 73 districts in 1998.

VII. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

54. A conjuncture of developments has created an opportunity for a bold initiative to adopt coordinated measures which will truly address the root causes responsible for the appalling human rights situation in Afghanistan, described in this report. The fundamental aim must be to restore Afghanistan to all of its people, through reviving and sustaining a peace process, a process of transition which will fill in the constitutional and political vacuum in which externally supported armed groups impose arbitrary rule without the consent or participation of the Afghan people, violating their human rights.

55. The process must be inclusive - and must aim to involve all segments of the Afghan population, including the several million refugees forced to live outside Afghanistan. The coordinated measures which need to be accorded priority include the following:

- Effective actions to end external support for the warring groups in Afghanistan;

- Implementation of the commitments made in the Tashkent Declaration in July 1999 and the Security Council's exhortations to end armed conflict as well as external support to the warring groups;

- Ensuring that neighbouring States of Afghanistan, in compliance with the above commitments, deny use of their territory as training and recruiting grounds for the warring parties, and to deny them material support, in particular fuel supplies necessary to sustain military operations and to carry out aerial bombardments;

- Promoting a consultative process among all segments of the Afghan population with a view to their reaching agreement on the transition process aimed to establish a broad-based, multi-ethnic, truly representative government.

56. This would recognize the basic truth underlined in the "Formidable Challenge" paper prepared for the Office of the United Nations Coordinator for Afghanistan that: "Bringing the war to an end is, without doubt the most important policy issue facing the international community from a human rights perspective. There is no substitute for peace ... those who profit from conflict, either in financial or political terms, have a stake in its continuation. The losers, namely the vast majority of Afghans, have a minimal and ever-declining capacity to withstand the war's harmful effects. **Stopping the arms flow must assume greater priority in the international community's endeavours to promote human rights in Afghanistan**." To this one may add the immediate interdiction of fuel supplies, in particular aviation fuel.

57. This view has received clear endorsement in the Secretary-General's latest report to the General Assembly. That report ascribes to the 20 years of war accumulated effects which continue to take a huge toll in lives, limbs and livelihood and states the unpalatable truth of the war in Afghanistan, namely the chronic dependency of the warring factions on foreign military support, endures. Such interference from outside the country remains one of the biggest impediments to peace as it provides the essential means for the continued fighting in the form of arms, ammunition and war-making materiel. It also emphasized that: "Equally alarming and unacceptable is the growing presence of thousands of 'foreign volunteers' mainly on the side of the Taliban". A statement of the Secretary-General's spokesman expressed the Secretary-General's deep concern over reports of the involvement in the conflict of students, some as young as 14, and calls on the warring parties to respect the Convention on the Rights of the Child". (Statement attributable to the spokesman of the Secretary-General, 17 August 1999).

58. In this context, the recent Loya Jirgah initiative provides a means for active and purposeful consultations among all Afghan people and the warring groups - the Taliban and the United Front - who may well be persuaded by the United Nations, and the "Six plus Two" group to participate in these consultations. These consultations could aim to devise a transition process which would provide agreed procedures for establishing a broad-based, multi-ethnic, truly representative government.

59. The importance of the protection of civilians and ensuring that humanitarian aid enhances and does not undermine the physical security and integrity of the people must remain "primordial policy consideration", as underlined in the "Formidable Challenge" paper prepared for the United Nations Coordinator for Afghanistan, should be fully appreciated and kept in view by the international community.

60. A note of caution needs to be added about that report's recommendation about "developing a dialogue with the authorities" while advancing with "rights-based programming". It should be noted, as does a recent study that pervasive human rights problems are both a cause and consequence of the governance crisis. The character of the existing authorities, who rule without the consent and participation of the Afghan people, is the root cause of human rights violations, ranging from imposition of "edicts" which provide for systematic gender

discrimination, to inflicting cruel, degrading and inhuman punishment and maintaining authoritarian rule. The focus thus needs to shift from incremental changes to a framework change.

61. The time may indeed be propitious for giving the highest priority to making a concerted effort to achieve a framework change in Afghanistan. The circumstances which encourage this view include changes in the neighbouring countries, the recent discussions among them, the meetings between the Taliban and their neighbours, the release of several hundred opposition prisoners by the Taliban, and the resolve expressed within the United Nations for positive action. All these, taken together, present an opening which should not be missed.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/34
25 February 2000

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the human rights situation in Burundi submitted by the Special Rapporteur, Mrs. Marie-Thérèse A. Keita Bocoum, in accordance with Commission resolution 1999/10

CONTENTS

	Paragraphs	Page
Summary		3
Introduction	1 - 17	5
I. GENERAL SITUATION	18 - 47	8
A. Impact of history	19 - 35	8
B. Political situation	36 - 44	10
C. Economic and social situation	45 - 47	12

GE.00-11295 (E)

CONTENTS (continued)

		Paragraphs	Page
II.	HUMAN RIGHTS SITUATION	48 - 132	12
	A. Violations connected with the armed conflict	49 - 54	12
	B. Violations connected with population displacements	55 - 56	13
	C. Violations of the right to freedom of movement and freedom to choose one's residence	57 - 67	14
	D. Violations of freedom of expression	68	15
	E. Violations of the right to life	69 - 91	16
	F. Violations of the right to personal freedom and security	92 - 104	20
	G. Violations of the right of trade unions to function freely	105	22
	H. Violations of the rights of persons deprived of their liberty	106 - 119	23
	I. Status of women	120 - 122	25
	J. Strengthening the rule of law	123 - 132	25
III.	OBSERVATIONS	133 - 144	27
IV.	RECOMMENDATIONS	145 - 167	29
	A. To the parties to the conflict	145 - 148	29
	B. To the Burundian authorities	149 - 157	29
	C. To the international community	158 - 167	30

Summary

The present document is the first report submitted by Mrs. Marie-Therese A. Keita Bocoum, who was appointed as Special Rapporteur on the human rights situation in Burundi on 10 August 1999. It is submitted in accordance with Commission on Human Rights resolution 1999/10 of 23 April 1999. The Special Rapporteur's mandate requires her to submit an interim report to the General Assembly at its fifty-fourth session and a report to the Commission at its fifty-sixth session.

This first report, which covers the period from 15 August to 15 November 1999, relates to the general situation in Burundi and, in particular, to the question of human rights, the status of women, the rights of the child and the importance of civil society in the process of the promotion of and respect for human rights. It is based on the Special Rapporteur's mission to Burundi from 8 to 22 October 1999. Following this first mission, the Special Rapporteur also submitted an oral presentation on the human rights situation in Burundi to the Third Committee of the General Assembly in New York on 5 November 1999.

Part I of the present report on the general situation in Burundi is a brief analysis of the impact of history on the development of the conflict in Burundi, the current political situation and the economic and social situation.

Part II deals with the particular situation of human rights, especially violations resulting from the armed conflict and the displacement of persons; violations of the right to life and the right to freedom of movement, freedom to choose one's residence, freedom of expression and liberty and security of person; violations of the right of trade unions to function freely and the rights of persons deprived of liberty; and the status of women and programmes to strengthen the rule of law.

The observations and recommendations based on these initial findings are to be found in parts III and IV. The observations relate to violations of human rights, forced displacements, violations of the rights of children, the way the human rights situation is perceived by political circles, the judiciary and civil society in Burundi; the attitude of the international community and donors towards development assistance; the implications of the conclusion of a peace agreement in Arusha; and the impact of tradition on the human rights situation and the economic situation.

The recommendations deriving from these observations are addressed to the parties to the conflict, the Burundian authorities and the international community. At the national level, they relate to respect for human rights and the assistance needs of the population affected by the civil war, the conduct of the parties to the conflict and the protection of civilians, the peace negotiations in Arusha and the conclusion of a ceasefire, and the policy of forced population displacement and security measures for the resumption of humanitarian assistance. The Special Rapporteur also recommends that the authorities should support civil society in its efforts to guarantee the advancement of women, increase the resources allocated to the Ministry of Social Action and the Advancement of Women and ensure that legislation is enacted with a view to the advancement and fulfilment of women in order to combat de facto inequalities and increase the participation of women in development and political decision-making. At the international level, the Special Rapporteur recommends that the international community should provide assistance

for the Arusha peace process and that donors should reconsider their attitude towards development assistance. The Special Rapporteur requests that programmes and initiatives designed to combat impunity and irregularities in the administration of justice should be maintained and encouraged. Support for international programmes on behalf of women, particularly those designed to heighten awareness of the rights of women and children, should also be increased. The Special Rapporteur likewise requests that emergency humanitarian assistance should be maintained, provided that security is guaranteed. She appeals to the international community and the States of the subregion to intensify measures to combat the arms and munitions trade and supports the idea of an international conference on peace and security in the Great Lakes region. Lastly, she requests that fuller support should be given to initiatives for human rights education and promotion in Burundi in order to encourage the establishment of a human rights culture.

Introduction

1. The present document is the first report submitted by Mrs. Marie-Therese A. Keita Bocoum, who was appointed as Special Rapporteur on the human rights situation in Burundi on 10 August 1999 to replace Mr. Paulo Sérgio Pinheiro, who served as the first Special Rapporteur from May 1995 to June 1999. The Special Rapporteur's mandate requires her to submit an interim report to the General Assembly and a report to the fifty-sixth session of the Commission on Human Rights and to give her work a gender-specific dimension. This first report covers the period from 15 August to 15 November 1999 and relates to the general situation in Burundi, particularly the human rights situation.

2. A few days after her appointment, the Special Rapporteur met with various persons at the Office of the United Nations High Commissioner for Human Rights in Geneva in order to determine exactly what her mission involved. She thus spoke with the Burundi and Africa desk officers, the officials in charge of the Activities and Programmes Branch and the Special Rapporteur on the question of torture. She greatly appreciated the explanations they gave her on the human rights situation in Burundi, her mandate as Special Rapporteur and the policies of the Office of the United Nations High Commissioner for Human Rights and the way it works.

3. The Special Rapporteur had a meeting with the High Commissioner for Human Rights, Mrs. Robinson, to whom she explained her views and expectations about her mission to Burundi. She also met with the Chairperson of the Commission on Human Rights, Mrs. Anderson, and the leader of the African Group, Mr. Morjane, Ambassador of Tunisia. She spoke with Mr. Adolphe Nahayo, head of the Permanent Mission of Burundi to the United Nations Office at Geneva, from whom she obtained information about the situation in the country. She informed them that she intended to go to Burundi as soon as possible to observe the human rights situation in person.

4. That intention was referred to in a letter addressed to the Government of Burundi and, more particularly, to the Minister for Human Rights, Institutional Reforms and Relations with the National Assembly through the intermediary of the Head of the Mission of Burundi in Geneva. The letter gave the planned dates of the mission. In its reply, the Government assured the Special Rapporteur of its full availability and support for the accomplishment of her mission.

5. The mission to Burundi began on 8 October 1999, after two days in Geneva, and ended on 22 October 1999. It was followed, from 22 to 26 October in Geneva, by a series of discussions, with the High Commissioner, for example, during which the Special Rapporteur described her impressions, and by a press conference, which was held on the morning of 25 October 1999.

6. During the mission, the Special Rapporteur met with the highest authorities in Burundi: Mr. Frédéric Bamvuginyumvira, first Vice-President of the Republic; Mr. Eugène Nindorera, Minister for Human Rights, Institutional Reforms and Relations with the National Assembly; Mr. Séverin Ntahomvukiye, Minister for Foreign Affairs and Cooperation; Colonel Alfred Nkurunziza, Minister of National Defence; Mr. Prosper Mpawenayo, Minister of National Education; Mrs. Romaine Ndorimana, Minister of Social Action and the Advancement of Women; Mr. Pascal Nkurunzira, Minister for the Reintegration and Resettlement of Displaced

and Repatriated Persons, Mr. Luc Rukingama, Minister of Communications and Government Spokesman, Mr. Léon Nimbona, Minister of Planning, Development and Reconstruction, the Director-General of the Prison Administration, and Ambassador Cyprien Mboninpa from the Ministry in charge of the peace process. The Special Rapporteur met political figures who are not members of the Government, such as former President Sylvestre Ntibantunganya and the leaders of political parties across the spectrum. The discussions took place in a frank and cordial atmosphere. The Special Rapporteur was, however, unable to meet with the President of the Republic and the President of the National Assembly, who had gone to Arusha to attend Mr. Nyerere's funeral, or with the Ministers of the Interior, Health and Justice because of their heavy programme of work.

7. The Special Rapporteur spoke with several justice officials: Mr. André Nyankiye, President of the Supreme Court, Mr. Gérard Ngendabanka, Attorney-General of the Republic, Mr. Tharcisse Ntakiyica, President of the Bar Association, and Mr. Segatoye, Supreme Court counsel. She also heard the viewpoint of prisoners during her visit to Mpimba prison in Bujumbura and the cachots of the Special Investigations Brigade (BSR) in Bujumbura.

8. The Special Rapporteur held talks with Mr. Sy, Special Representative of the Secretary-General for Burundi, who gave her invaluable assistance. During her meetings with senior officials of the United Nations system, particularly Mrs. Kathleen Cravero Kristoffersson, Resident Coordinator of the United Nations system's operational activities for development, the Special Rapporteur appreciated the efforts made to provide her with the assistance and documentation she needed to ensure the success of her mission.

9. The Special Rapporteur also spoke with members of the diplomatic corps, particularly the ambassadors of France, Russia, China, Egypt and Belgium, the representative of the Apostolic Nuncio, the chargés d'affaires of the United States, the Netherlands and Rwanda, the representative of the European Union and the representative of the International Committee of the Red Cross (ICRC). She met with the representatives of employers' organizations, trade unions composed of persons who work in various occupational groups and members of local and international non-governmental organizations and availed herself of the opportunity to hold discussions with members of civil society, especially women's and human rights associations, and with representatives of the Muslim and Christian religious communities.

10. The Special Rapporteur's discussions with all these persons related to the general situation in Burundi, the question of human rights, the status of women, the rights of the child and the importance of civil society in the process of the promotion of and respect for human rights in Burundi.

11. The Special Rapporteur thanks the Government of Burundi, the heads of diplomatic missions, the Special Representative of the Secretary-General, the heads of United Nations agencies in Burundi and, in particular, the Director and the staff of the Office of the United Nations High Commissioner for Human Rights in Burundi (OHCDHB) for their availability and the assistance they provided throughout her mission. She takes this opportunity to pay a tribute to the work done by her predecessor, Mr. Paulo Sérgio Pinheiro, who served for four years with competence and dedication as Special Rapporteur on the human rights situation in Burundi.

12. The initial programme of the mission provided for visits inside the country, particularly in the provinces of Ngozi, Bujumbura-Mairie, Makamba and Bujumbura-rural; visits to camps for "regrouped" and displaced persons; prisons; and regional and provincial courts. However, the great insecurity resulting from the renewed outbreak of armed conflict between government forces and the rebels and, in particular, the serious incident of 12 October 1999, which cost the life of several Burundian dignitaries and expatriates in Muzye in the province of Rutana, led to changes in the mission's programme; the Special Rapporteur had to restrict her travel to the capital - and to areas authorized by the United Nations Security Unit. She also had to observe the ceasefire imposed on United Nations officials from 8 p.m. to 7 a.m. For all these reasons, the initial programme was changed several times.

13. Consequently, some discussions which would have been helpful for understanding the human rights situation in Burundi could not take place, even though the Special Rapporteur had received confirmation that they would be held. To remedy these shortcomings and with a view to fuller understanding of the human rights situation, the Special Rapporteur often had to improvise meetings with persons who could give her information on matters relating to Burundi and, when security so allowed, make visits to unscheduled places.

14. The Special Rapporteur's stay was marked by several serious incidents: the death of the former President of Tanzania, Mr. Julius Nyerere, the mediator of the Arusha negotiations; armed attacks in the provinces of Bujumbura-rural and Bujumbura-Mairie; the increase in the number of so-called "protection sites", especially in the province of Bujumbura-rural; and the murder in Muzye of two United Nations officials, Luis Zuñiga, UNICEF representative in Burundi, and Saskia von Meijenfeldt, WFP logistics official, and of seven Burundians who were carrying out a humanitarian mission in the province of Rutana under the leadership of Mrs. Cravero Kristoffersson (see para. 98).

15. These odious murders led to the implementation of phase IV of the United Nations Security Plan and the cancellation, for security reasons, of all travel by the Special Rapporteur within the country and even in parts of Bujumbura. The start of phase IV led to a sharp reduction (50 per cent and more) in the staff of the United Nations and some NGOs. The courage and self-denial of members of humanitarian and human rights organizations who are making untiring efforts to help the Burundian people, particularly the most underprivileged, are to be commended.

16. The Special Rapporteur had planned to undertake a second mission to Burundi in early January 2000, but the continuing lack of security and the maintenance of phase IV - and probably also financial constraints - did not allow her to make the trip, which might be postponed until a later date.

17. Part I of the present report will deal with the analysis of the general situation in Burundi, part II with the particular situation of human rights in Burundi, part III with observations, and part IV with recommendations based on these preliminary findings.

I. GENERAL SITUATION

18. The general situation in Burundi is influenced by history, political events and the economic and social situation. The civil war creates victims among the civilian population everyday. In recent months, there have been renewed outbreaks of armed conflict and violence.

A. Impact of history

19. According to estimates, Burundi's population is between 6.5 and 7 million inhabitants, divided into three groups: Hutus (about 85 per cent), Tutsis (about 14 per cent) and Twas (about 1 per cent). Burundians share the same language, Kirundi, which is both the official and the national language. Despite this tripartite composition, Burundians used to live without ethnic barriers.

20. Two princely dynasties (Ganwa) fought to gain control of the country during the colonial period (1889-1962), as they had done before colonization. The Union pour le progrès national (UNPRONA) was dominated by the Bezi Ganwa, while the Parti démocrate chrétien (PDC) was headed by the Batari Ganwa. The September 1961 legislative elections were won by UPRONA, but Prince Louis Rwagasoré, Prime Minister-designate, was murdered one month later. His successor conducted the negotiations leading up to independence on 1 July 1962. From then on, politics was marked by the rivalry between Hutus and Tutsis.

21. On 28 November 1966, Captain Michel Micombero, the Tutsi Prime Minister belonging to the Hima group, overthrew the monarchy and proclaimed the Republic. Power then passed into the hands of the army. Renewed violence followed. The most serious massacres took place in 1972 and were started by Hutu soldiers belonging to the Burundian refugee community in Tanzania; thousands of Tutsis were killed. The Tutsis reacted immediately by taking reprisals, the first targets of which were educated Hutus: secondary school and university students, teachers, nurses, doctors, priests, university professors, etc. This disaster cost the life of over 100,000 Hutus and led to the large-scale exodus of members of this community.

22. The massacres, which had far-reaching effects on Burundi, unfortunately went unpunished. There was never any official inquiry to determine responsibility and bring the persons who had carried out the killings to justice.

23. The overthrow in November 1976 of President Micombero by Colonel Jean-Baptiste Bagaza, who was also a Hima, brought about an 11-year lull and the return of many refugees. However, power remained entirely in the hands of the Tutsis. The reaction of the community of Burundian Hutu refugees living in Tanzania was to create the Parti de la libération du peuple hutu (PALIPEHUTU) in 1980. In September 1987, Bagaza was deposed by a group of officers led by Major Pierre Buyoya.

24. When he acceded to the highest office, Pierre Buyoya took measures to share power more equitably. In October 1988, he established a national unity commission composed of Hutus and Tutsis in equal numbers and requested it to consider the ethnic question. He reshuffled his cabinet and gave slightly more than half the portfolios, including that of Prime Minister, to Hutus. Major institutional reforms took place and the army abandoned politics. A new

constitution, which entered into force on 13 March 1992, ended 16 years of single-party rule. The traditional administrative bodies, factors in national integration, were re-established.

25. These efforts to bring about harmony nevertheless came up against extremists on both sides. In 1991 and 1992, PALIPEHUTU officials committed extremely lethal acts against Tutsis that called for a firm reaction on the part of the authorities. The survivors established militias which joined in with the army to carry out executions of Hutu civilians. The extremist faction in the army which came out in favour of Colonel Bagaza was decapitated. However, the preparations for the June 1993 presidential election went off calmly. A dozen political parties were set up, but the competition was mainly between UPRONA and the Front pour la démocratie au Burundi (FRODEBU).

26. On 1 June 1993, the first presidential election in Burundi's history, which was held in satisfactory conditions, saw the overwhelming victory of the FRODEBU candidate, Melchior Ndadaye. Pierre Buyoya accepted the results and urged Burundians to do the same. Legislative elections held in an atmosphere of calm a few weeks later were won by FRODEBU with 71.4 per cent of the votes. Ndadaye formed a government of 23 members, of whom the Prime Minister and 9 others were Tutsis.

27. The democratic experiment was short-lived because, after a first unsuccessful attempt, Tutsi parachutists overthrew President Ndadaye, who was assassinated on 21 October 1993. Hutu civilians launched intense offensives against the Tutsis. Soldiers called out to re-establish order massacred Hutus in their turn. Refugees once again left the country to escape being massacred.

28. As a result of the international community's condemnations, the persons responsible for the coup d'état re-established constitutional rule until March 1994, when serious disturbances broke out. On 6 April 1994, the plane carrying President Cyprien Ntaryamira was shot down over Kigali, in Rwanda. The President of the National Assembly, Sylvestre Ntibantunganya, who inherited power, took over in the meantime and began negotiations during which UPRONA and FRODEBU both remained inflexible.

29. The disturbances which followed this conflict adversely affected human rights. The two parties were equally guilty of serious violations of human rights during and after the 1993 coup d'état. The October 1993 events were so disruptive of the functioning of the country's political institutions that, even one year later, international organizations still had no one to speak with because many officials who had fled the country had not resumed their posts. The problem affected many activities, including the distribution of food aid and the operation of hospitals and schools.

30. The destruction of the social fabric appears to be the most serious consequence of the crisis. For some, the situation has reached the point where the Government has no other means of asserting itself than systematic open warfare. Traditional values are crumbling. The distrust which characterized relations between ethnic groups has in many cases turned to hatred. Each community fears exclusion if the other is in power.

31. After the Ndadaye Government was overthrown in October 1993, the international community chose to prevent further violent conflicts by working towards a political consensus aired at power-sharing between the political parties representing the country's two main ethnic groups. This policy met with some success, as the two dominant parties ceased being mono-ethnic from that point on. The international community has also been working towards the implementation of solutions to meet the legitimate aspirations of the ethnodemographic majority, while preserving the minority group's basic right to exist.

32. The lengthy political negotations did, however, result in the Convention on Governance, on 10 September 1994. But without the will to respect the Convention and in the absence of an agreement on a common political project, the measures which had been planned lost their effectiveness. The failure of the Convention and the persistence of the violence showed how fragile the political consensus was. Another coup d'état took place on 25 July 1996, led by Major Pierre Buyoya, who became Acting President. The response to this coup d'état was an embargo imposed by Burundi's neighbours, which demanded the restoration of the National Assembly, the re-establishment of the political parties and the immediate and unconditional opening of negotiations between all parties to the conflict in order for the embargo to be lifted.

33. The first two conditions were met on 16 September 1996. For the international community, the third is still far from being met, although negotiations to that end began in Arusha, Tanzania, as far back as August 1997. A few months before Arusha and approximately eight months after the coup d'état, a preliminary agreement on a general negotiation framework was concluded in Rome. On 10 March 1997, under the mediation of the Comunitá di Sant'Egidio, representatives of the Government of Burundi and of the National Council for the Defence of Democracy (CNDD) signed an agreement on the agenda for the negotiations. The meetings, which had initially been kept secret, were made public in mid-May 1997. The disclosure gave rise to opposition from all sides, probably influencing the course of the Rome negotiations, which did not continue.

34. The Rome meeting was followed by others, such as a meeting organized by UNESCO in Paris in September 1997 and the Conference on Conflict Resolution in Africa, programmed jointly by the Nyerere Foundation and UNDP and held in January 1998, although it did not deal exclusively with Burundi.

35. The direct negotiations which began in June 1998 in Arusha under the mediation of former Tanzanian President Julius Nyerere represented a step forward and reflected the national and international communities' hopes for efforts to find a peaceful solution. At the time of the Special Rapporteur's mission, however, those hopes were far from fulfilment.

B. Political situation

36. Following consultations in Dar es Salaam, the sixth round of Burundian talks was held in Arusha from 13 to 18 September 1999. No concrete progress was made at this session on the crucial questions of security, democracy and the transition. The Government and the political parties, meeting together as the "G8 Group", stressed that the hostilities must end before an agreement could be signed.

37. There is still disagreement on certain questions within the alliances in Burundi itself. Following the rebel attacks on Bujumbura, a few parties such as the Liberal Party demanded the suspension of the Arusha process in order to concentrate efforts on the war and threatened to pull out of the negotiations. The participants were also under increasing pressure by the international community to reach an agreement.

38. In response to the persistent rebel attacks on Bujumbura, self-defence groups began to be established. Following the Lusaka peace agreement (10 July 1999) on the Democratic Republic of the Congo, the local media began to report cross-border movements of rebels from the Congo to Burundi in an apparent attempt to avoid disarmament, as required by the Lusaka agreement.

39. At a meeting on 23 and 24 September 1999 in Vienna, donors confirmed their decision to make the resumption of bilateral aid conditional on the results of the Arusha talks. They did, however, maintain expanded humanitarian assistance and showed a particular interest in the strengthening of the administration of justice.

40. In view of the delays in reaching a peace agreement, the Burundi Human Rights League (Iteka) published a statement stressing the risks involved in the current political and security situation. It also called on the international community to pressure the parties to the conflict to observe a ceasefire. During September 1999, 2,082 Burundian refugees in Tanzania, mostly women and children, returned home. During the same period, 2,256 Burundians left their country as refugees.

41. In a statement to the United Nations General Assembly on 2 October 1999, the Burundian Minister for Foreign Affairs and Cooperation said that the ending of hostilities was a condition for the signing of a peace agreement in the framework of the Burundian peace negotiations. He also called on the rebel movements to take part in the talks and said that the Government was prepared to hold discussions with all the groups, even outside the framework of the Arusha process. Despite their exclusion from the Arusha talks, the Forces pour la Défense de la Démocratie (FDD), the armed wing of the Conseil Nationale pour la Défense de la Démocratie (CNDD), and the Forces Nationales pour la Libération (FNL), the armed wing of PALIPEHUTU, reaffirmed their willingness to negotiate, but also their determination to continue the armed struggle.

42. After the death of mediator Julius Nyerere on 14 October 1999, the participants in the talks said that they were still determined to continue outside negotiations. Consultations immediately began with a view to appointing a new mediator and discussing the future of the talks. After numerous consultations, former President of South Africa Nelson Mandela was appointed to replace Mr. Nyerere on 1 December 1999.

43. The international community, for its part, proved reluctant. As mentioned earlier, most of the donors hesitated to resume bilateral cooperation before a peace agreement was signed. Some decided not to wait for the results of the negotiations. For example, the Government of France granted financial aid in the amount of several million French francs, the World Bank and Belgium also made contributions without first requiring the signing of a peace agreement.

44. In October, representatives of the international community, including the Secretary-General of the United Nations, expressed concern about the forced displacement and regroupment of the population of the province of Bujumbura-rural and the increase in violence. The Under-Secretary-General for Humanitarian Affairs reaffirmed United Nations disapproval of the regroupment policy. Its attitude had no effect on the Government of Burundi, which justified its policy by the need to protect the civilian population from the fighting taking place in the provinces involved in the armed conflict.

C. Economic and social situation

45. Burundi's economy is dependent on agriculture, which provides the country with most of its foreign income and supports nearly 94 per cent of the population. The country's economic situation, which has been deteriorating since the early 1980s, worsened further with the economic embargo imposed by the international community in July 1996. Considering the gravity of the situation, action was taken at the national and international levels to persuade the international community to lift the embargo. But the suspension of the embargo in January 1999 was not followed up by sufficient development assistance and had no positive effects on the country's economy.

46. The population displacements, which intensified in October 1999, at the height of the harvest period, had an adverse effect on agriculture. In addition, the peasants had no time to tend their crops and were often forced to eat the seeds distributed to them. The war effort also considerably limited development investment.

47. Economic difficulties brought about a deterioration in social conditions. The meetings between the Special Rapporteur, the medical staff of the health centres visited and the representative of the Employers Federation indicated that AIDS was one of the country's major health problems: there is a 15 to 20 per cent rate of HIV seroprevalence among the people, 70 to 80 per cent of hospital patients in the internal medicine wing of King Khaled Hospital and 50 per cent of patients at Prince Regent Charles Hospital are AIDS sufferers.

II. HUMAN RIGHTS SITUATION

48. In a context of economic precariousness compounded by insecurity, there has been an increase in the number and seriousness of human rights violations, the most obvious signs of which are mass killings, numerous murders by people of different origins, forced displacements to the regroupment camps known as "protection sites" and irregularities in the system of justice.

A. Violations connected with the armed conflict

49. Violence connected with the civil war increased considerably during the month of September, especially in the capital. The southern provinces of Bururi, Makamba and Rutana were also the scene of rebel attacks and violent clashes between rebels and the military. Most of the acts of violence committed in September were said to be the work of rebel groups such as FDD and FNL.

50. In the second half of September 1999, the rebels attacked Bujumbura several times a week. The beginning of the attacks, 19 September, coincided with the end of the Arusha negotiations. The rebels seemed to have wanted to make a show of force to prove that they were able to take on the army in the province of Bujumbura-rural and to show their discontent with any agreement concluded without them. Thus, most of these attacks, which have produced 30 or so civilian casualties, were aimed at non-military targets, principally among the Tutsi population.

51. On 9 September, the Minister of National Defence visited the regions of Mutamba and Kanyosha and warned the people of the province of Bujumbura-rural against cooperating with the rebels. In the province of Rutana, the armed conflict was reported to have intensified since the second half of September 1999. The communes of Mpinga-Kayove, Giharo and Musongati were particularly affected by these developments.

52. In connection with the attack on Muzye, province of Rutana, it should be noted that, in July and early September, the rebel groups PALIPEHUTU-FNL and CNDD-FDD issued warnings to the international community. PALIPEHUTU-FNL announced an increase in attacks on the capital and asked foreigners to leave the country. CNDD-FDD criticized the Government's population regroupment policy. Diplomatic missions in Bujumbura were informed of the threats against foreigners at the beginning of the period in question.

53. The rebels also strengthened their presence in the Kibira forest and increased their attacks on civilians in that area. the most serious massacre, in which 30 or so civilians were killed by rebels in the commune of Muramvya, took place on 20 October 1999.

54. In the province of Bujumbura-rural, fighting between the Forces armées burundaises (FAB) and the rebel groups continued, in particular in communes such as Kanyosha, Kabezi, Mutambu, Isale and Mubimbi. Information on the impact of that situation on the civilian population in the province has become scarce owing to the regroupment of civilians in the camps and the suspension of the activities of United Nations bodies and other international organizations during the second half of the month. Information is available, however, on the situation in the areas adjacent to the capital, where many violations of human rights and humanitarian law by the FAB and the rebel groups have been reported to the Office of the High Commissioner for Human Rights in Burundi (OHCDHB).

B. Violations connected with population displacements

55. The heavy losses of military personnel and the 19 September rebel attack on Bujumbura led the authorities to return to measures they had applied in the past. In an effort to deprive the rebels of their base, exert greater control over the population and conduct military operations more effectively, the Government decided to speed up and finalize the regroupment of the population of Bujumbura-rural in camps.

56. In September 1999, the Government of the urban province of Bujumbura-Mairie (hereinafter "Bujumbura-Mairie") was reorganized and four new areas established. According to the Government, the new structure was set up in order to bring the administration closer to the people. However, consideration of these areas from a demographic standpoint shows that the division was made more or less along ethnic lines. Three of the new areas, Musaga, Gihosha and

Cibitoke, are mostly inhabited by one ethnic group, while most of the population of Kanyosha, Kamenge and Buterere belongs to another group. This reorganization came on the heels of an escalation of rebel attacks on the capital which increased ethnic tensions among the people of Bujumbura.

C. Violations of the right to freedom of movement and freedom to choose one's residence

57. The Special Rapporteur was informed that, on 20 September 1999, the authorities began the forced regroupment of the population of Bujumbura-rural in camps. There are approximately 320,000 displaced persons in the province, i.e. more than 70 per cent of its population. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), more than 800,000 people throughout the country, or 13 per cent of the total population, were displaced in late September 1999. The Office of the High Commissioner and the other humanitarian agencies were not given access to those sites until a week later, on 27 September: observers noted the alarming humanitarian situation owing to the lack of drinking water, food, medical care and shelters.

58. During the forced displacement of the population, which began on 20 September 1999, unarmed civilians were killed by the army, which organized the displacement. The Special Rapporteur learned that OHCDHB received reports of several incidents of that kind, but has not yet been able to verify them on site, as access to the places in question was refused by the military authorities on the ground of the prevailing insecurity.

59. The Special Rapporteur was informed of the regroupment conditions in the Nyambuye sector of the commune of Isale, province of Bujumbura-rural. The armed forces conducted a forced regroupment at the Gitezi site which allegedly resulted in the deaths of several people. Information points to the lack of water, food, shelters and health care and the complete lack of protection at night.

60. In October, population regroupment was stepped up in the provinces of Bujumbura-rural, Rutana and Makamba. According to the United Nations Office for the Coordination of Humanitarian Affairs, 317,384 inhabitants of Bujumbura-rural were displaced at the end of October. Several displaced persons camps in the province remain inaccessible by road, and this seriously hampers humanitarian relief efforts. The precarious conditions in the camps deteriorated further after the suspension of United Nations activities.

61. On 3 October, a new military position was established at Gitezi. Some of the displaced persons were distressed at the behaviour of the military personnel, who allegedly inflicted inhuman treatment on the displaced persons.

62. During October 1999, two displaced camps called "Chez Johnson" and "Chez Legentil", in the Kamenge area (Bujumbura-Mairie) were dismantled by the authorities, who said that they were being used as hiding places by the rebels. On or about 7 October, approximately 6,000 displaced persons from Bujumbura-rural who had come to the camps the previous September following the regroupment of the population of that province were forced by the authorities to leave the camps for regroupment camps in their own province. On 21 October, the

remaining displaced persons, mostly from the area of Kamenge itself, were forced to leave. Some displaced persons expressed concern at the scarcity of water and electricity and the lack of land.

63. This regroupment violated not only the right to freedom of movement and freedom to choose one's residence, but also economic, social and cultural rights. The camps lack the necessary infrastructures, while, in most cases, the people are forced to leave their homes without prior notice. At only a few sites, are the people occasionally given permission to go to their fields. It was not until a few days after the regroupment that the authorities appealed to the humanitarian organizations to take action to provide those displaced persons with assistance. The humanitarian organizations expressed their concern at the possibility of a deterioration of humanitarian conditions at inaccessible sites and in cases where regroupment took place over a lengthy period of time.

64. A similar situation to that of the province of Rutana was reported in the province of Makamba, where the military authorities also decided, as a counter-insurgency measure, to regroup the population in camps. This forced regroupment, together with harassment by the rebels, caused thousands of people to move into Tanzania. These refugees also come from provinces such as Rutana and Muyinga. According to UNHCR, a good number of them had only recently returned.

65. In the first week of October alone, approximately 3,000 Burundian refugees were registered by UNHCR, but movement subsequently decreased owing to the closing of the border by the Forces armées burundaises (FAB) and the figure rose to 6,531 refugees at the end of the month. That was the highest monthly refugee figure for 1999, whereas there had been a downward trend since June 1999. Returnees, however, numbered 600 to 700, considerably lower than the figures for the two preceding months.

66. In general, the suspension of United Nations activities during phase IV of the United Nations Security Plan had a serious impact on the human rights situation. First, hundreds of thousands of internally displaced persons, confined to camps lacking the necessary infrastructures, were now deprived not only of their livelihood, but of vital humanitarian assistance. Second, human rights violations continued, but went largely unnoticed, and it was difficult to obtain information about the human rights situation.

67. In view of all these developments, the human rights situation deteriorated significantly in comparison with the preceding months, when the situation was already critical. In fact, the population of several provinces had been experiencing a high level of violence since the beginning of the year. However, current developments were a sign that the conflict was intensifying. The parties to the conflict were hardening their positions and extremism was becoming widespread.

D. Violations of freedom of expression

68. On 18 October 1999, the Conseil National de la Communication suspended publication of the weekly newspaper La Vérité for two months. It justified the measure by the newspaper's

publication of a "hate-mongering" and "tribalist" article allegedly containing gratuitous accusations and insults towards the Papal Nuncio, potentially undermining privacy, security, tranquillity and cooperation with States.

E. Violations of the right to life

1. Violations attributed to agents of the State

69. On 16 September 1999, three civilians, including the Administrator of the commune, were reportedly killed by a member of the military in the commune of Buhinyuza, province of Myinga. According to information obtained from witnesses, the soldier, who was from the Nyarunazi military position, wanted to take revenge on the Administrator, Fidèle Ntukamazina, who had repeatedly reported the soldier's abusive behaviour to his military superiors. The other two victims, Epipode Mugisha and Jean Bamporiki, were allegedly in a bistro with the Administrator when the soldier opened fire and were also shot. The soldier committed suicide after the crime. The Buhinyuza chef de zone and a member of the municipal government confirmed the violation. The commander of the Nyarunzi military position, interviewed at the site, indicated that no effect had been given to the Administrator's complaints against the soldier; however, the commander confirmed the facts.

70. On 20 September 1999, 20 civilians were allegedly killed by members of the military in Rweza colline, Muyira area, commune of Kanyosha, province of Bujumbura-rural. According to testimony by inhabitants of the colline, military personnel from the Sororezo and Muyira positions executed 20 or so persons from the collines of Rweza, Muyaga, Kavumu, Kamozo and Sororezo, who had been on their way either to the market or to work in the capital. It should be noted that, on the same day, the military began a forced regroupment of the population of the commune of Kanyosha. The Governor of the province confirmed the deaths of five civilians allegedly shot during an armed confrontation.

71. On 22 September 1999, a civilian was killed by military personnel in Busige colline, Muyira area, commune of Kanyosha (Bujumbura-rural). According to accounts by inhabitants of the area regrouped in Kavumu, no one was allowed to leave the site to find food without a special exemption. On 21 September, people attempted to fetch water, but the military prevented them from doing so by opening fire. Under the same circumstances, the next day, Désiré, approximately 24 years old, the son of Vénérande, was killed in Busige colline; a witness reported having seen his body. The Administrator of Kanyosha commune and the commander of the First Military Region confirmed the facts, but believe the event to have been an accident.

72. From 27 September 1999 to 3 October 1999, seven internally displaced persons allegedly died in the Mubone area, commune of Kabezi (Bujumbura-rural). Some of the victims are said to have died from the poor conditions in the camp, especially disease, while others were killed by military personnel when they went out to the fields. Those who died of illness were for the most part children. OHCDHB submitted these cases to the Administrator of the commune, who denied that displaced persons had died, but gave no details.

73. On 4 October 1999, Dismas Bucami was allegedly killed by a member of the military at the administrative headquarters of Karuzi province. The victim, a bar-owner, was allegedly shot to death by the soldier because he refused to continue serving him drinks. The next day, the soldier was arrested by the people and interrogated by the district commander. The Karuzi prosecutor allegedly refused to allow OHCDHB to meet with the accused on the ground that the interrogation was not over. He was to be transferred to Muyinga, where his case was to be heard by the military advisor's office.

74. On 8 October 1999, six civilians were killed and seven wounded by a member of the military at Ruyaga, commune of Kanyosha (Bujumbura-rural). The incident took place at night at the regroupment site in the area; the victims were one man, two women and three children. According to witnesses, the perpetrator was drunk and opened fire during an identity check. He was immediately arrested and held in the communal detention centre at Kanyosha. The Minister of National Defence issued a press release expressing regret at the incident. Before the perpetrator was even put on trial, the press release stated that the punishment would be "suited to the crime".

75. On 15 October 1999, a civilian was allegedly killed by the FAB in the Kamenge area (Bujumbura-Mairie). The victim was a cowherd trying to find fodder for his cows. Reportedly, the owner of the cows recognized his employee, but the military put a military uniform on the victim's body and a rifle near it in order to make him appear to be a rebel. However, the chief of staff of the First Military Region insisted that the victim, who allegedly stole a gendarme's weapon, was a rebel from a group which had attacked the military position.

76. The Special Rapporteur learned that the following offences were committed during his stay in Burundi:

(a) On 3 October 1999, 37 people were allegedly killed by the FAB in retaliation for a rebel attack, in the Nkenga district, Kanyosha area (Bujumbura-Mairie). The head of military operations of the army general staff confirmed the fact that two civilians had died during an armed confrontation, on 4 October, following a rebel attack the night before on a military position in which two members of the military were killed and seven wounded;

(b) It was reported that, on 12 October 1999, three civilians were killed by the FAB and two disappeared, both in Ruziba, Kanyosha area. The head of military operations of the army general staff confirmed the fact that the FAB killed three people who were in a prohibited area and consequently taken for rebels;

(c) On 24 October 1999, eight people were allegedly killed by the FAB at Muyaga, Gihosha area (Bujumbura-Mairie). The liaison unit of the Ministry of Human Rights, Institutional Reforms and Relations with the National Assembly confirmed the deaths of three civilians, i.e. one elderly woman and two children, shot by stray bullets.

2. Violence attributed to rebel groups

77. On 3 September 1999, 15 people are reported to have been killed by rebels in the commune of Kabezi, in the province of Bujumbura-rural. The eight civilians and seven members of the military were travelling in a vehicle that was attacked by a rebel rocket on the RN3 road. Four of the civilians were Regideso employees returning from Mugere power station. The incident was confirmed by the commanding officer of the 1st military region and the Liaison Group.

78. On 9 September 1999, three civilians are reported to have been killed by rebels in Ruyigi district, Kinama area (Bujumbura-Mairie). According to eye witnesses, at around 9 p.m., armed individuals started shooting in a number of districts in the area and moved towards the premises of a women's association in Ruyigi. They fired at the nightwatchman, set fire to three vehicles and ransacked the building, carrying off money and food. Two other people were killed and an officer of the Gendarmerie's 3rd Intervention Battalion was wounded. Some witnesses blamed the attack on armed civilians from districts such as Musaga and Cibitoke, where the majority of residents are Tutsi.

79. This attack prompted many residents of the district to flee to the "Chez Johnson" and "Chez Legentil" displaced persons' camps in Kamenge. The chef de zone attributed the attack to the rebels who had killed three people. False information had been put out earlier about an imminent Tutsi militia attack. The Liaison Group of the Ministry of Human Rights has confirmed this: in its opinion, rebels were clearly responsible for the attack.

80. On 19 September 1999, at least five civilians are reported to have been killed and two others wounded by rebels in Mutanga Nord district, Kamenge area, and in Mutanga Sud district, Rohero area (Bujumbura-Mairie). Some witnesses say the rebels arrived at around 9 p.m. by way of the Ntahangwa river valley, while others state that they came by minibus as far as the bridge over the river. They are then reported to have attacked a military position in the vicinity and also passers-by. The victims were a lawyer, two nightwatchmen and one person who was burnt to death in a house; two others, one of them a soldier, were seriously wounded.

81. According to some informants, one of the objectives in this attack was the Kamenge military hospital, but the attackers never reached it. The body of one of the rebels was found in the river the next day. The Government stated in a press release that a group of rebels had attacked the area by the river Ntahangwa at around 10 p.m., targeting chiefly passing vehicles. They killed five people, wounded a number of others and set fire to or damaged cars. In its counter-attack, the army killed five of the assailants.

82. On 23 September 1999, at around 9 p.m., rebels are reported to have attacked Kinanira district in the Musaga area (Bujumbura-Mairie). The following day, OHCDHB visited the site and saw the body of a rebel wearing a military jacket. He spoke to the chef de zone, who confirmed that no civilians had been attacked. The local military position had fought off the attack after an exchange of fire lasting two hours.

83. On 23 and 24 September 1999, a large number of civilians are reported to have been killed by rebels in the communes of Musongati and Mpinga-Kayove, in the province of Rutana. In Mpinga-Kayove, several people were killed and others wounded and the health centre and primary school in Rukonka were set on fire. In Musongati, the rebels are said to have killed the chief of the Songa sector and looted several homes.

84. According to witnesses, most of the victims in the commune of Mpinga-Kayove were Tutsis, who had been specifically targeted by the attackers. One of these victims was a trader, killed in Kayero. One of those who escaped said that the rebels had attacked Cero colline (Mpinga-Kayove) on 23 September, at about 10 a.m. Some of them were in military uniform, others in civilian dress, and they had asked people whether they were Tutsis. According to some witnesses, those in uniform spoke Kinyarwanda, while those in civilian dress spoke Kirundi. From the testimony of a 16-year-old girl wounded by a machete, it seems that she was probably raped: the attackers apparently forced her to lie on the ground and she lost consciousness after being hit in the face by a machete.

85. On 4 October 1999, 13 civilians were killed and 5 others wounded by rebels in Kanga district, Kinama area (Bujumbura-Mairie). Witnesses say that an unspecified number of rebels, whom they supposed to belong to the FNL, attacked at about 8.30 p.m. Some of the attackers spoke Kinyarwanda, they were armed with guns and machetes and attacked six houses in 28th Avenue. Nine persons were killed outright and seven who were wounded were taken to the hospital, where four of them died. In addition, all the witnesses stated that the soldiers from the three positions in the area took action only after the attack and that a number of soldiers had run away.

86. On 12 October 1999, at least nine persons were killed and a number of others wounded by rebels in Giharo, the main town of Muzye area, in the province of Rutana. Two international officials of the United Nations, Mr. Zuñiga, the UNICEF Representative, and Ms. Von Meijenfeldt, responsible for logistics for WFP, were among the dead and other international and national civil servants were injured. Those who escaped testify that a group of some 35 armed persons opened fire just as a humanitarian convoy was arriving at the Muzye camp for internally displaced persons. Some of the attackers lined the United Nations officials up against the wall of a house and robbed them of their valuables before executing Mr. Zuñiga and Ms. Von Meijenfeldt. The others managed to escape. A number of Burundians, including the Director of the province's sugar factory (SOSUMO) and four soldiers, were also killed in the attack and others were wounded. Those who escaped were not able to identify the assailants, but they suspected that they were either rebels or mutineers from State forces such as the FAB seeking to sabotage the peace process.

87. The Government blames the attack on the CNDD-FDD rebel group, which is supported by former members of the Rwandan Armed Forces (FAR) and by Rwandan Interahamwe. According to the army spokesman, the attack took the military by surprise, but no soldiers were killed apart from the Rutana district commander's driver, two humanitarian aid vehicles were also burnt. The Government said that it would conduct a thorough inquiry and bring the perpetrators to justice; a report has been submitted to the United Nations Secretary-General by the Minister of Justice.

88. CNDD-FDD has denied responsibility for the attack, stating that it could not attack any place where there were civilians. It blames the FAB for the attack. The Burundi League for Human Rights asked for an official inquiry into administrative responsibility and possible negligence in security matters in a province "where security conditions were known to be unstable".

3. Acts of violence by persons unknown

89. On 28 September 1999, five civilians are reported to have been killed and one other wounded by persons unknown, in Gasenyi district, Kamenge area (Bujumbura-Mairie). Four of the victims were children, the fifth was a man; one other child was wounded. Three families were attacked and the perpetrators were not clearly identified.

90. On the night of 1 October 1999, two civilians were killed by rebels at Matonge, in the commune of Bubanza, province of Bubanza. The victims are said to have been an elderly couple; the rebels also looted four households. This allegation was communicated by the social and cultural counsellor of the Provincial Governor.

91. On 20 October 1999, at least 22 civilians are reported to have been killed and 20 others wounded by rebels at Mpehe, in Busimba sector, commune and province of Muramvya. The Governor blames the massacre on rebel groups. The Provincial Governor and the prosecutor reported that the victims were attacked with bladed weapons. The Liaison Group of the Ministry of Human Rights reported that the number of deaths was higher than 22, as some of the wounded died later.

F. Violations of the right to personal freedom and security

1. Arbitrary arrests

92. On 10 September 1999, Pierre Claver Hajayandi was arrested and detained at the offices of the Special Investigations Brigade (BSR) in Bujumbura-Mairie. According to his family, Mr. Hajayandi was arrested without a warrant and BSR refused to allow his family to visit him. He was apparently arrested after having made statements that were considered political. The family states that he suffers from an illness requiring regular attention. OHCDHB informed the State Prosecutor, but had no access to BSR during the entire period under consideration. The Liaison Group informed OHCDHB that Mr. Hajayandi was released on 20 September 1999.

93. On 16 September 1999, some 20 men were arrested by police in the commune of Buganda, province of Cibitoke. Eighteen workmen and two students from the Adventist seminary in Buganda were apparently arrested at the seminary by the police commander because they came from the province of Bujumbura-rural and some of them had not yet been registered by the administration. They were not charged with any offence or crime, the commander said. Lack of transport prevented them being transferred to their own province. A seminary official confirmed that the 18 workmen were working at the seminary and that the two students most

probably studied there. He said that seven of the workers were registered with the Gasenyi chef de zone and that the other 13 persons had arrived at the seminary just before their arrest. At the end of September, they were being held in the Buganda and Cibitoke police stations and the Cibitoke area.

94. On 20 September 1999, Nestor Ndihokubwayo was arrested by the gendarmes in the commune of Gishubi, province of Gitega, and charged with massacres and looting in 1993. The prosecution's warrant for his arrest was apparently issued three days after his detention. On 29 September, he was transferred to Gitega central prison, where OHCDHB gave him legal assistance.

95. The Special Rapporteur has been told of the case of Jean Rurubikiye, who was arrested on 29 September 1999 by the communal administrator of Mwumba, province of Ngozi. The matter related to a land dispute before the Ngozi Court of Major Jurisdiction. However, the chef de zone apparently arrested the man at the request of the complainant. OHCDHB reported the matter to the Ngozi Prosecutor and, after a joint visit to the town jail with the deputy Prosecutor on 6 October, Mr. Rurubikiye was released.

96. On 1 October 1999, Diogène Ntagorama, a Rwandan refugee, is reported to have been arrested by BSR at Bujumbura-Mairie. He was arrested on the day he was to take the plane to his country of asylum, Norway, as a refugee under the protection of UNHCR. On 4 October, OHCDHB and UNHCR met with the BSR commander, who confirmed the arrest and said it had been carried out under an international arrest warrant issued by the Kigali office of Interpol. The commander said he had handed Mr. Ntagorama over to the Rwandan security forces. The arrest and the extradition were therefore contrary to refugee law.

2. Illegal detention

97. On 15 September 1999, Ms. Jacqueline Kamikazi is reported to have been arrested in Bwiza area (Bujumbura-Mairie) and transferred on 22 September into illegal detention in a military camp. She was reportedly charged with aiding and abetting the rebellion and was detained in Musaga base camp (Bujumbura) in a cell with soldiers. She testified that she was raped by one of them during the first night in detention. She said she informed a camp official, but no action was taken. The commander of the 1st military region and the Liaison Group confirm that Ms. Kamikazi was arrested, but deny that she was detained in the same cell as men or raped. It should, however, be pointed out that her detention never had any legal basis.

3. Violations of the right to physical integrity

98. The Special Rapporteur has been informed of two cases of ill-treatment involving the detainees Léopold Niyonzima and Didace Manirakiza, registered by OHCDHB and the State Prosecutor on 23 September 1999 during a visit to the Butezi town jail.

99. The Special Rapporteur has been informed that, on 20 October 1999, three civilians were wounded by a member of the military in Gihosha area (Bujumbura-Mairie). The victims were said to be members of the choir, who were in the Mont-Sion church. The head of military

operations at army headquarters denied the allegation. According to him, there was a skirmish between a soldier and some rebels who were hiding in the church and who fired on the soldier's house, which was opposite the church. The Liaison Group has confirmed this version.

100. The Special Rapporteur has been informed of the case of Arthémon Karikurubu, said to have been tortured by the Bujumbura Public Security Police (PSP). He was arrested without a warrant on 18 October 1999 and released on 22 October without having been questioned or charged. According to the victim, on the day of his arrest, he was beaten with a hammer by the head of the PSP post in the Musaga area (Bujumbura-Mairie).

4. Irregularities noted during court proceedings

101. A number of irregularities noted during court proceedings have been brought to the Special Rapporteur's attention. One case is the trial of Fidèle Habonimana in the Court of Major Jurisdiction in the province of Muramvya. Mr. Habonimana, who was arrested in November 1998 for theft, was tortured by local residents and held in the Kiganda town jail with no medical attention. There were a number of irregularities in the court proceedings. Mr. Habonimana and those who ill-treated him were prosecuted in the same case. After his arrest, the charge of theft was changed to theft and criminal association. The victim of the ill-treatment is still in detention, while the perpetrators remain at large. Moreover, the examining magistrate in the case has been appointed president of the Court and is now on the bench. In the absence of the other accused, the case was postponed to 7 October 1999.

5. Violations of other rights

102. On 25 September 1999, rebels are said to have attacked Gatoke district, in Rohero area (Bujumbura-Mairie). They are reported to have attacked a military position located beside a cowshed, killed and decapitated a soldier, killed or wounded several others and stolen a number of cows, before setting fire to the cowshed. Two unexploded grenades were reportedly found in some neighbouring houses. In the ensuing skirmish four rebels were killed.

103. The Special Rapporteur has been informed that land belonging to several people in the Kamenge area (Bujumbura-Mairie) was expropriated when they abandoned it following military operations in the area in 1995. The Government of Burundi says that a commission was established on 23 August 1999 to settle these problems.

104. The communal administrators of Gishubi, Buraza and Mataho, all in the province of Gitega, are of the opinion that the decision by the Government of Burundi to increase school fees from 300 to 1,000 Burundi francs per pupil might be a violation of the right to education. Many displaced persons and others with few resources would not be able to pay the fees and the children would therefore not go to school.

G. Violations of the right of trade unions to function freely

105. On 10 September, Ildéphonse Ndagijimana was arrested and detained at the National Registry in Bujumbura-Mairie. The Special Rapporteur met with Mr. Ndagijimana, who is chairman of the Postal and Telecommunications Workers' Union; he was reportedly arrested

without a warrant after calling a strike, detained in a non-recognized place of detention and denied visitors. The Liaison Group reported that Mr. Ndagijimana was released on 17 September.

H. Violations of the rights of persons deprived of their liberty

1. Prisons

106. The situation in prisons improved somewhat in September and October following a reduction in the number of prisoners as a result of prosecution service efforts to clear them. According to Prison Administration statistics, the total number of detainees in September was 9,441 - a reduction of 119 on August and 9,419 in October, a figure that confirms the downward trend observed since July 1999.

107. The total number of persons in pre-trial detention in prisons has also fallen, dropping from 78 per cent in August to 76 per cent in October. Nevertheless, the length of pre-trial detention remains a serious problem and many detainees are in prison on flimsy legal grounds or quite illegally and have in some cases been there since 1994.

108. The number of persons detained in Ngozi (men's) prison and Bubanza has continued to fall. Bubanza is one of the few prisons where convicted prisoners are still in the majority (56 per cent). In Ngozi, Buriri and Muyinga, convicted prisoners account for only 7 per cent, 8 per cent and 17 per cent of the prison population. The percentage is still extremely low despite a slight rise over preceding months. In the other prisons visited by OHCDHB, there has been no noticeable change. Material conditions of detention have improved, with the help of ICRC, in particular.

109. On 29 October 1999, the population of Ngozi men's prison stood at 2,459, an increase of 11 since the beginning of the month, despite 49 releases recorded in September and 25 in October. Ninety per cent of the pre-trial detainees are charged with crimes relating to the 1993 massacres.

110. Ngozi prison also contains a women's prison with 62 inmates, of whom 24 are convicted prisoners and 38 are in pre-trial detention. The population was lower in October than in September. According to the reports, only Ngozi has a women's prison. In the other prisons, men and women are detained in the same building.

111. On 5 October 1999, Bubanza prison held 95 prisoners, including two women and three minors. Fifty-three were convicted prisoners and 42 were in pre-trial detention. The total number has once more decreased, owing - according to the Prison Governor - to five releases and seven transfers in September 1999. However, the most recent inspection by the prosecution service was made on 25 May 1999.

112. OHCDHB observers who visited the other prisons of Ngozi, Gitega and Bubanza found detention conditions there not very different.

113. The central prison of Bujumbura, Mpimba, had 2,838 prisoners (even though it was built to hold 800) at the time of the Special Rapporteur's visit on 20 October 1999, including 86 women and 31 minors officially registered. Of these, 856 or 30 per cent had been sentenced, and 229 of those to death; 1,982 or 70 per cent were in pre-trial detention. Conditions in the prison are appalling: there is not enough water for the prisoners, the sanitation is bad and the food quite inadequate (300 g of beans and 300 g of manioc flour) and protein-deficient. Financial resources are cruelly lacking. The premises date from 1960, but are in an appalling state, with prisoners living in dangerous, overcrowded conditions, exacerbated by the existence of faulty electrical circuits in the cells. The Governor told the Special Rapporteur that there was a risk of accidents.

114. The 229 prisoners in Mpimba prison who have been sentenced to death and are awaiting execution share three cells, each one measuring a few square meters. At night, when there is a little space, they sleep piled one on top of the other. The women sleep apart from the men, it is true, but they share the same courtyard and the same living space, and no one knows for how long. There is no minors' wing; children share the adults' cells; there are very young children in the prisons sharing the same quarters as criminals. In his complaints to the Special Rapporteur, the Prison Governor even requested that a school should be built within the prison for prisoners' children. The prison infirmary is a minute area of a few square meters, with a clear lack of medicines (two nurses for an average of 293 cases per week).

2. Other places of detention

115. The Special Rapporteur noted that the visits conducted by OHCDHB to the cachots in temporary detention centres in the provinces of Ngozi and Karuzi, in particular police cachots (Nyabikere, Karuzi) and the town jails in Mutumba and Nyabikere (Karuzi) and in Ngozi and Mwumba (Ngozi) and in Mubuga area, commune of Ruhororo (Ngozi), had not revealed any major irregularities. The majority of the prisoners were charged with minor ordinary offences. The prosecutors or deputy prosecutors accompanying OHCDHB on the visits released a number of those being held in some of the cachots.

116. The Special Rapporteur was able to visit the BSR cachots in Bujumbura-Mairie and noted that they were in good condition and that the number of prisoners was not very high. She was told that, owing to a lack of resources, investigations could involve pre-trial detention often far in excess of five days.

117. The Special Rapporteur noted that, on 6 October 1999, four persons were detained in the Mwumba communal cachot, province of Ngozi, all for ordinary offences. The deputy prosecutor questioned them as to the date and reasons for their arrest. Following a confrontation between them and their accusers, who happened to be present, and after hearing the communal administrator and the chef de zone in front of a large crowd watching the debate, the deputy prosecutor apparently decided to release the four prisoners immediately.

118. On the same day, the Ngozi communal cachot held four prisoners, all charged with minor offences. The deputy prosecutor decided to release one of them immediately, imposed a small fine on one of the others and remanded the remaining two in custody for a few days.

119. On 6 October 1999, five persons were in detention in the communal cachot of Mutumba, province of Karuzi. One of them had been in custody for longer than the legal period and was immediately released by the deputy prosecutor accompanying OHCDHB. The Nyabikere communal cachot in the province of Karuzi also held one prisoner, arrested the same day.

I. Status of women

120. Although the legislation in force does not discriminate specifically against women, economic problems and the burden of tradition have relegated women to a position of inferiority. Yet, they represent 52 per cent of the Burundian population and many of them have become heads of household because of the war. Women are subjected to discrimination in politics and education, for example, no women participated in the Arusha negotiations. Women are well-represented in primary education; currently, 38 per cent of secondary school students are girls, but they account for only 23 per cent of the university student population.

121. Women enjoy no rights of succession, they cannot own property or even enjoy the goods produced by their own labour. Some go into prostitution because of poverty and the lack of separation between male and female prisoners encourages rape.

122. The budget allocated to the Ministry of Social Action and the Advancement of Women shows that women are not among the Government's priorities. However, initiatives for the improvement of the status of women are being implemented by women's associations, which receive assistance from the United Nations Development Fund for Women (UNIFEM), the United Nations Development Programme (UNDP) and international non-governmental organizations (NGOs). These initiatives, coupled with good will, could transform women into active promoters of a culture of peace and respect for human rights.

J. Strengthening the rule of law

1. Technical cooperation

123. The programme focuses primarily on the training of legal professionals and aims to reach at least 60 per cent of staff in each category so that there are at least two trained judges in each court (bench and prosecution). It receives assistance from OHCDHB. The new Code of Criminal Procedure is currently being popularized in connection with this project. During the period under review, discussions related to the printing of the Code and its translation into Kirundi, the preparation of an explanatory booklet and the training of trainers for the popularization of the text.

124. The Special Rapporteur has taken note with satisfaction of the progress achieved with the help of the legal assistance programme, which normally involves six international and eight Burundian lawyers brought together by OHCDHB. Of the 145 cases on the docket in September 1999, only 17, i.e. 12 per cent, have been closed. Most cases have been deferred because of the absence of witnesses or persons associated with the prosecution. One extremely positive development, however, is that the death penalty has not been applied and 47 of the persons tried were acquitted. There have also been slightly more shorter sentences than life sentences.

125. With barely 10 per cent of the cases closed, productivity for October 1999 was below the monthly average, probably because there was no lawyer present in many cases. Once again, the lowest output levels were recorded in Ngozi, where only 5 of 99 cases were closed. On the other hand, the Criminal Division in the province of Gitega did not hand down any death sentences, confirming the trend in that court to the restricted use of the death penalty. The unusually high proportion of life sentences (53 per cent) is attributable to the fact that, in one single case in the Bujumbura Criminal Division, 23 persons were sentenced in their absence to life imprisonment.

126. Between July and September 1999, the Supreme Court handed down decisions in 17 cases and overturned one. There is a serious hindrance to the proper administration of justice in that Court, since accused persons and their counsel are not provided with a copy of the sentence to enable them to lodge an appeal. As the time-frame allowed for remedies is short, they are forced to appeal without knowing the exact grounds of the judgement handed down by the Criminal Division. OHCDHB has raised this matter with the Supreme Court on several occasions, but the Court has so far not demonstrated its willingness to find an appropriate solution.

127. The eleventh session of the criminal divisions ran from 11 October to 11 November 1999. There were 282 cases on the docket and only 27 of them were closed. Most of the cases have been deferred because of the absence of witnesses or persons associated with the prosecution, and others because lawyers could not travel around the country, for security reasons. The legal assistance offered by OHCDHB was interrupted in Ngozi and Gitega from 14 October to 25 October and 28 October, respectively, when United Nations staff was called back to Bujumbura under phase IV of the Security Plan. Legal assistance was interrupted in Bujumbura for a short time only.

128. On 7 September 1999, the Bujumbura Criminal Division handed down a ruling in the RPCC 891 case against Eloi Kwizera and Ladislas Nsabimana, who were accused of robbery. Mr. Kwizera was sentenced to 10 years' imprisonment and Mr. Nsabimana to 20 years. The court gave Mr. Kwizera the maximum sentence to which he was liable under article 16 (1), chapter I, of the Penal Code. However, that was a violation of Burundian legislation, since the accused was 14 years old at the time when the crime was committed and should therefore not have been given the maximum sentence. After OHCDHB intervened, Mr. Kwizera's name was put on the list of prisoners likely to be released soon on parole.

129. On 22 October 1999, a decision was handed down in case RPCC 784 in which four persons were accused of carrying out an attack involving a massacre, looting and widespread destruction (art. 417, CP L11) in the province of Karuzi. They were all sentenced to death. Several appeals were filed, but the witnesses went back on their statements to the police and the Prosecutor's Office. The same witnesses had testified in the appeal cases brought before the Gitega Criminal Division without naming the four accused as accessories to the massacres committed in Karuzi. Despite the thorough investigation that had been conducted to elucidate the truth and ensure the proper administration of justice, all the accused were given death sentences. Their lawyers filed appeals.

130. During the period under review, the Special Rapporteur noted that certain actions on the part of the courts and the Prosecutor's Office could be interpreted as tangible signs that the administration of justice had improved. For example, conditional release was granted in a case involving persons accused of assault and armed gang involvement, but this is a rare occurrence. It was also noted that prosecutors and accused assisted by legal counsel are increasingly being placed on an equal footing. Prosecutors are beginning to understand that their job entails investigations both for the prosecution and for the defence and therefore sometimes request conditional release for an accused person.

2. Human rights promotion and education

131. In order to promote human rights, exchanges have taken place between human rights promoters in Burundi, with the assistance of OHCDHB. The establishment of a framework for dialogue and discussion with the beneficiaries of the Office's activities comes within the context of responsible participation aimed at involving them in the new strategies. OHCDHB has thus been liaising with institutional partners, local associations and humanitarian organizations. The initiative is designed to create a close association between these partners at the programme formulation stage in order to take greater account of their needs and concerns.

132. As part of activities to increase awareness of and promote human rights, several workshops were held in the various provinces with the participation of OHCDHB, the Ministry of Human Rights, United Nations bodies and NGOs operating in Burundi. The workshops were held in September and October and focused on fundamental rights and children's rights.

III. OBSERVATIONS

133. On the whole, the human rights situation in Burundi has deteriorated, as shown by the increase in violations of the right to life and physical integrity, allegedly committed by State agents, armed rebel groups and unidentified gangs. Civilians' right to protection is often violated during rebel attacks, military operations and clashes between the army and rebels. Frequently, the civilian population is accused of complicity and attacked by both sides.

134. During hospital visits, the Special Rapporteur saw scores of women and children who had been shot or mutilated, including an infant only a few months old who had been shot while being carried on his mother's back. At the military hospital, there were also cases of serious mutilation caused by anti-personnel mines laid by rebels.

135. The displacement of the population to regroupment camps not only takes place under coercion, but has also led to gross violations of the rights to life, liberty and security of person, freedom of movement and residence, property ownership, housing, work and the free choice of employment, health, education, adequate food and a decent living. Although the authorities justify the regroupment policy by the claim that they are trying to protect the civilian population, living conditions in the camps cast doubts on the truth of that claim and the real purpose of the policy.

136. The civil war, large-scale displacements, the regroupment of persons and increasing poverty have led to the violation of several rights of the child, as provided for in the Convention

on the Rights of the Child, which has been ratified by Burundi, especially with regard to displacements, ill-treatment, the protection of children who have been deprived of their family environment, disabled children, health care, the right to education, the rights to be protected against sexual exploitation, torture and deprivation of liberty, the right to protection of children in armed conflict and the rights of children who have committed an offence.

137. The seriousness of the human rights situation is, however, recognized by everyone in Burundi and they definitely want to improve it. For instance:

(a) All politicians recognize that there have been many human rights abuses, although some of them try to blame it on the war;

(b) In the judiciary and the prison system, efforts are being made to combat irregularities in pre-trial detention. Admittedly, a lot of ground remains to be covered for the rule of law to be established in Burundi, but there are a few glimmers of hope;

(c) In civil society, especially among women, there seems to be a desire to put an end to war and division; ideas and actions are being guided by the beginnings of a culture of peace and human rights.

138. All the actors involved agree that poverty has affected the human rights situation, but much remains to be done to combat growing impoverishment. The extreme poverty that goes together with human rights violations often creates a dilemma for the representatives of the international community and donors: should they step up international pressure by reducing assistance, especially development assistance, or by withdrawing it altogether, knowing that this might make poverty worse? Or should they promote assistance and take the risk of giving free rein to all sorts of human rights violations? The first option gives priority to civil and political rights, whereas the second focuses on economic rights, at the expense of civil and political rights.

139. In this context, it might be a rather extreme solution to make the granting of assistance conditional on the implementation of the provisions of the Arusha Agreement and the conclusion of a peace agreement. Some countries and organizations have, moreover, softened their positions in this regard.

140. An analysis of the human rights situation in Burundi must take account of the fact that Burundian society is strongly influenced by tradition. This problem, which has both negative and positive effects, is reflected in many areas of political, economic, social and cultural life. The continued adoption of traditional approaches by some persons, particularly those belonging to the political elite, may negatively influence their perception and idea of respect for human rights. However, a policy for the prevention and promotion of human rights would be more effective if it included certain traditional values (see para. 152). Emphasis must therefore be placed on a policy of human rights education because there is no point in denouncing and punishing violations of universal human rights principles if the people concerned are not familiar with them.

141. Pressure by the international community is also less effective if extreme poverty, which is not a good guide, pushes people into committing abuses. Greater awareness must therefore be developed of the need for respect for economic and social rights, especially those of women and children, the main victims of the conflict.

142. It should be noted that the reduction of technical assistance and cooperation in the field of public health penalizes the population, which needs medical care and medicines to survive in time of war.

143. The Burundian economy is dependent on subsistence farming, based mainly on traditional farming methods, but, if cooperation and trade are reduced, there will be no hope of the modernization of the economy, which is essential during this time of globalization and whose effects would benefit all Burundians, not just the political elite.

144. The situation in Burundi therefore has to be viewed in the light of all these factors, so that solutions may be found that involve all the players concerned at the national and international levels.

IV. RECOMMENDATIONS

A. To the parties to the conflict

145. The Special Rapporteur invites the parties to the conflict - rebels and agents of the State - to end attacks on civilians and to respect the lives of the civilian population and representatives of humanitarian organizations who are sparing no effort, at the risk of their own lives, to assist Burundians.

146. Peace and security must prevail in Burundi if human rights violations are to be stopped. All the parties involved in the conflict must therefore be encouraged to participate fully in the negotiations so that a ceasefire may be reached and a peace agreement signed as soon as possible.

147. In addition to a commitment to resolve conflicts without resorting to the use of weapons, all the parties to the conflict must give the new facilitator of the peace negotiations in Arusha their unfailing support and do their share to ensure that the internal partnership works smoothly.

148. The Special Rapporteur is launching an appeal to the parties to the conflict to guarantee the safety and free access of representatives of humanitarian and human rights organizations to those in need.

B. To the Burundian authorities

149. The regroupment of the population is an unacceptable practice; this has been made known to the Government of Burundi many times and has been condemned by the international community. The Government must therefore be invited in no uncertain terms to suspend its policy of population displacement and to take appropriate measures to guarantee human rights, including economic and social rights.

150. In view of the economic and social situation, the Government should take all appropriate measures to combat poverty and insecurity.

151. It should seek to guarantee the more equitable distribution of goods and take more effective measures to combat regional disparities and the exploitation of ethnic differences. In this connection, the steps taken by the Ministry of Education to combat inequalities and regional disparities in education are to be encouraged and sustained, as is the action taken in the judicial field and by the Ministry of Human Rights.

152. The Government of Burundi must take all necessary measures to disseminate and implement that the new Code of Criminal Procedure. In order to help bring the justice system and persons subject to its jurisdiction closer together and, in general, to promote human rights in Burundi, the Special Rapporteur invites the Burundian authorities to draw on or increase reliance on traditional values and institutions that have existed in Burundi for centuries, such as the Ubushingantahe and the Bashingantahe.* The project to activate some of these traditions and institutions is supported by UNDP.

153. The Government should set up a national police force which is separate from the national armed forces in order to make a clear-cut distinction between their functions.

154. The Government must enact legislation to ensure the advancement and fulfilment of women in order to combat de facto inequalities and encourage greater participation by women in development and political decision-making.

155. The Government must take all necessary measures to support the efforts being made by civil society to improve the status of women. It must also increase funding for the Ministry of Social Action and the Advancement of Women so that it may play the role assigned to it.

156. In order to reduce sources of conflict, the Government must take all necessary steps to combat exclusion and impunity.

157. Since humanitarian assistance is one of the essential means of ensuring the population's survival in time of civil war, the Government must take all necessary measures to guarantee the safety of convoys and the persons responsible for delivering and distributing assistance for the benefit of those in emergency situations.

C. To the international community

158. The international community must provide all possible assistance to the Burundi Peace Process in Arusha and to the new negotiations facilitator. It must support the initiatives already taken by Mr. Mandela to bring the peace process to a rapid conclusion.

---

* See the addendum to the 1996 report by Mr. Paulo Sérgio Pinheiro for more detailed information on these two traditional dispute settlement mechanisms (E/CN.4/1996/16/Add.1, para. 56 and footnote 5/).

159. In order to combat poverty and its consequences, the Burundian economy needs to be boosted. The Special Rapporteur invites the international community to consider increasing assistance and support for community projects by providing access to microcredit, especially for women, and backing for associations whose statutes respect human rights principles. Donors and donor countries should also be urged to reconsider their attitude towards development assistance so that such assistance might have a significant impact on the economy.

160. The international community must keep up its pressure in favour of respect for human rights, especially social and economic rights, but pressure and support combined would be more effective than retaliatory measures alone. Such an approach would strengthen the moderates' influence and lead more rapidly to the conclusion of a peace agreement.

161. In order to combat impunity and irregularities in the system of justice, it is essential:

(a) To continue to support the legal assistance programme being implemented by the Office of the High Commissioner for Human Rights in Burundi (OHCDHB);

(b) To encourage and support the initiatives taken along these lines by government departments such as the Ministries of Justice, Human Rights and Education, NGOs, human rights associations and multilateral organizations;

(c) To help with the implementation of measures to combat irregularities in the justice system, including the new Code of Criminal Procedure.

162. Observation and exposure cannot continue to be the only weapons used to combat human rights violations. In order to facilitate the emergence of a human rights culture, greater support must be given to initiatives for human rights education and promotion, in cooperation with OHCDHB.

163. In order to facilitate the emergence of a culture of peace, greater support must be given to international programmes in favour of women, especially those which focus on raising awareness of and disseminating information on the rights of women and children.

164. As to security, the maintenance of phase IV of the Security Plan has produced extremely regrettable consequences. Emergency humanitarian assistance must be maintained, but in adequate security conditions. An agreement therefore has to be signed between the Burundian authorities and the United Nations to guarantee such conditions. In the current crisis situation, action to guarantee respect for human rights is one way of ensuring the survival of the population. It would therefore be unfortunate if the funds earmarked for that campaign were decreased. They should, rather, be increased, in view of the considerable reduction in the number of OHCDHB observers, of whom there are now five. There is no doubt that the presence of observers is a very effective monitoring and deterrence tool.

165. The international community, in particular the States of the subregion, must step up their efforts against the illicit traffic in weapons and munitions and ensure that refugee camps are kept strictly civilian.

166. Bearing in mind the strong interdependence of the States of the Great Lakes region and the fact that peace and security in Burundi are bound to affect peace and security in the region as a whole, the holding of an international conference on these issues must be encouraged.

167. Lastly, the international community must spare no effort to bring about an immediate end to the killings, massacres and other forms of violations of human rights in Burundi, including those of women and children. These acts of violence are most often committed against innocent, defenceless people whose only desire is to live, flourish and prosper in this beautiful country where everyone used to live in harmony.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/35
18 January 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the Islamic Republic of Iran

Report of the Special Representative, Maurice Danby Copithorne, submitted pursuant to Commission resolution 1999/13

CONTENTS

		Paragraphs	Page
Executive summary			3
Introduction		1 - 4	5
I.	THE SPECIAL REPRESENTATIVE'S ACTIVITIES AND SOURCES	5 - 7	5
II.	FREEDOM OF EXPRESSION	8 - 16	6
III.	THE STATUS OF WOMEN	17 - 23	7

GE.00-10252 (E)

CONTENTS (continued)

		Paragraphs	Page
IV.	THE STATUS OF MINORITIES	24 - 32	9
	A. General	24	9
	B. Evangelical Protestants	25 - 27	9
	C. Baha'is	28 - 32	10
V.	LEGAL SUBJECTS	33 - 51	11
	A. Fair trial	33 - 36	11
	B. Reform of the legal system	37 - 42	12
	C. Lawyers	43	13
	D. The prison system	44 - 45	13
	E. Torture and other cruel, inhuman or degrading treatment or punishment	46 - 51	14
VI.	DEMOCRACY/CIVIL SOCIETY	52 - 57	14
VII.	DISAPPEARANCES AND SUSPICIOUS DEATHS	58 - 61	15
VIII.	OTHER IMPORTANT MATTERS	62 - 75	16
	A. Student demonstrations	62 - 65	16
	B. Treatment of Shia dissidents	66 - 68	17
	C. The Islamic Human Rights Commission (IHRC)	69 - 71	18
	D. Drugs: a national and international problem	72 - 75	18
IX.	CORRESPONDENCE WITH THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN	76 - 77	19
X.	CONCLUSIONS	78 - 81	19

Annexes

I.	Information on the situation of the Baha'is	22
II.	Correspondence between the Special Representative and the Government of the Islamic Republic of Iran	23

Executive summary

The mandate of the Special Representative is the human rights situation in the Islamic Republic of Iran. The Special Representative submits a report to the Commission on Human Rights at its annual session and an interim report to the General Assembly. The current report addresses the developments in the mandate since the last session of the Commission with particular reference to those occurring between approximately 1 July and 15 December. As the Special Representative has not been invited lately to visit Iran, his activities are carried out entirely outside the country. He receives a wide variety of written communications from the Government, from international non-governmental organizations, and from private organizations and individuals located in Iran and abroad. He also receives representations in person during his official visits to Geneva and to New York.

The Special Representative sends both urgent representations as well as requests for information to the Government of the Islamic Republic of Iran. These are sometimes submitted alone and sometimes jointly with special rapporteurs holding thematic mandates.

The Special Representative's key findings as reflected in the current report are:

- Human rights in Iran remains a work in progress, as indeed it probably is in most countries;

- Iran is a dynamic society and in the period under review, significant progress has become evident in a number of areas, but not in all;

- In the area of freedom of expression, there has been significant progress, except with respect to the press where progress has been significant in terms of quantity, but the press advocating reform has come under severe pressure from a variety of tribunals. The result has been the closure of the journal in some cases, the imprisonment of the publisher or editor in some and the withdrawal of the licence to publish in others. There have also been some actions taken against individual journalists;

- The educational and health levels of women continue to improve but they continue to be under-represented in the work force. Despite its commitment to improving the status of women, the Government has launched no significant initiatives to address the discrimination women face in the legal system;

- The Government has shown little commitment to change in the area of the status of minorities;

- The law is one of the areas in most need of significant improvement. In the human rights context, there now seems to be a commitment on the part of the Government but so far there is little to show for it;

- In the area of democracy, elections were held for the first time at the local level. The important issue now is the Majlis elections in February 2000 and, in particular, the process for vetting the candidates;

- In the area of disappearances and suspicious deaths, as well as that of the handling of the student demonstrations that took place in July 1999, the issue is the response by the Government which so far has been neither thoroughgoing nor prompt. This has raised scepticism as to its commitment to bring the malefactors to justice in an open courtroom.

The Special Representative's key recommendations follow from the key findings outlined above. He recommends:

- That freedom of expression, with particular regard to the press, be reinforced by confining the review of the conduct of the press to the legislated press-review mechanism and that that mechanism be implemented with full regard to the principles of fair trial;

- That the Government commit itself to taking initiatives to address the discrimination women face in the legal system;

- That the Government introduce political endeavour and supporting resources to address the systemic barriers and social attitudes standing in the way of the realization of human rights by the ethnic and religious minorities;

- That the Government attach high priority to pressing forward with reform of the legal system, including by requiring all standards of fair trial to be applied in all courtrooms and by removing from the bench judges who disregard these standards or use their courtrooms to advance their own views rather than applying legally mandated norms;

- That the Government urgently address the slow and secretive manner, and indeed the conduct of the legal investigations being carried out concerning a series of murders and disappearances of political and intellectual dissidents, and of student leaders and others involved in the July student demonstrations.

Introduction

1. The Special Representative herewith presents his fifth report to the Commission on Human Rights. There has been much change in the political and social fabric of the Islamic Republic of Iran. Some of this has translated into improvements to the human rights situation in the country. The intent of this report is to capture the main areas where this progress can be seen and where it has yet to be felt.

2. The preparation of this report has not become less of a challenge. Iran is a dynamic society in which the pace of change has increased significantly over the year since the last report to the Commission. It is thus more awkward than ever to be obliged to report on only three quarters of a year; this report is being prepared in the first half of December, three months before the Commission convenes, and probably four months before the Commission reaches the relevant agenda item.

3. The Special Representative has again identified the priority areas as he sees them through which he attempts to assess the human rights situation in the country. As a result, the report is far from comprehensive; no doubt there has been change in some other areas which have not come to his attention. Similarly, there are undoubtedly dark spots which have not come to his attention.

4. Overall, progress is certainly being made and, in the Special Representative's view, it is very likely to continue, perhaps even accelerate. History suggests that it is very difficult to turn the clock back as a society comes to appreciate the inherent strength of a democratic, tolerant and inclusive community in which the dignity of the individual is truly respected.

I. THE SPECIAL REPRESENTATIVE'S ACTIVITIES AND SOURCES

5. The Special Representative introduced his fourth report to the Third Committee of the General Assembly (A/54/365) on 2 November 1999. While in New York, he held consultations with representatives of the Government of the Islamic Republic of Iran and representatives of several non-governmental organizations based in North America. The Special Representative travelled to Geneva from 3 to 14 December 1999 to draft the present report. The extensive programme for his stay in Geneva included a number of consultations and meetings with senior officials from the Government and the Office of the United Nations High Commissioner for Human Rights (OHCHR). He also met with representatives of various non-governmental organizations, and he received representations from interested persons concerning alleged human rights violations in the Islamic Republic.

6. In seeking to discharge his mandate, the Special Representative has used many sources of information, including the Government of the Islamic Republic, other Governments, individuals, non-governmental organizations and the Iranian and international media. In Geneva, the Special Representative had an opportunity to participate in an inter-agency informal consultation organized by OHCHR to discuss and exchange information among various United Nations and other intergovernmental agencies about the human rights and humanitarian situations in the Islamic Republic.

7. During the period under review, the Special Representative received written communications from the following non-governmental organizations about Iran: Amnesty International; Baha'i International Community; Committee for Defence of Liberty in Iran; Committee for the Defence of Prisoners in Iran; Committee to Protect Journalists; Constitutionalist Movement of Iran; Democratic Party of Iranian Kurdistan; Dr. Homa Darabi Foundation; Human Rights Watch; International PEN American Center; International PEN Writers in Prison Committee; Iranian Worker Left Unity; Organization for Defending Victims of Violence; National Council of Resistance of Iran; Reporters sans Frontières; Society for the Defence of Political Prisoners in Iran; and the Spectrum Institute.

II. FREEDOM OF EXPRESSION

8. Since the election of President Khatami, the press has been growing significantly in terms of the number of licences issued and in the diversity of viewpoints. With some exceptions, a wide spectrum of views on most subject areas now appears to be tolerated. There is no prepublication censorship of newspapers. Nevertheless, the real test is the nature and degree of the constraints that still exist.

9. Since the spring of 1999, the reformist press has been under growing attack. Five papers have been banned but three of these have reappeared under new names. Publishers and editors have been imprisoned and had the right to hold a licence suspended for a term of years. Typical charges are the publication of false news and provocative headlines, misleading the readership, insulting Islamic sanctities, and insulting clerics. Other recent charges have included advocating renewed relations with the United States, criticizing Iran's opposition to the Middle East peace process, and arguing that people should be allowed to clap, whistle and cheer at concerts and political rallies. Some of these cases engendered wide popular interest and frequently, outspoken support for the publication under attack. The banning of one paper was one of the precipitating events of the July student demonstrations in Tehran and Tabriz. The public trial in November of a prominent cleric-turned-politician-turned-publisher became a cause célèbre because of his defence of free speech, his condemnation of the court, and his prospective candidature in the February Majlis elections. The press generally remains defiant. The first issue of a new publication appearing only two weeks after the banning of its predecessor announced "... Fatth believes that there are no taboos in opinions and political discussions except those laid down in the constitution, and that no official is immune from criticism".

10. Government ministers have frequently expressed concern at these efforts to limit free expression. Most recently, the President has declared that what he called "the culture of criticism" must be expanded and strengthened. On another occasion he declared that the closure of certain journals and the trial of some of the persons involved "was a great loss for the system and society". The newly established journalists' associations have joined in the criticism of the current situation.

11. One of the casualties has been the credibility of both the press tribunal and the court system in general. The general courts (and in particular Tehran Branch 1410), the revolutionary courts and the clerical courts have all asserted jurisdiction over newspapers and their publishers. Until recently, the control of the press had been largely left to the legislated press control system

with its own tribunal. This tribunal has now been challenged not only from without but also by the arbitrary actions of the recently appointed judge of the court who has brought the tribunal to the brink of being dysfunctional. The judge was reprimanded for dismissing five of the press tribunal jurors, but he was not removed; his latest challenge to the integrity of the legislated system has been his apparent insistence on sitting in with the jury during its deliberations.

12. Further uncertainty was generated by draft legislation intended to address certain ambiguities in the existing law, particularly the definition of a political offence. In fact, the bill has been drafted so broadly as to constitute a weapon for a more severe repression of the press. At this writing, the draft legislation has been put over to the sixth Majlis to be convened after the February elections.

13. Also of concern has been the attitude of Iran's higher authorities that even a discussion of the death penalty could be viewed as a challenge to the Islamic law of retribution which in turn could be interpreted as a denial of Islamic principles. In the view of the Special Representative, a denial of even a discussion of the death penalty - or any other subject - clearly constitutes an impediment to the freedom of expression.

14. In October, a firestorm developed over a satirical play by four university students writing in an obscure magazine with reportedly 150 subscribers. The students had incorporated the Twelfth Imam in an attack on Iranian conservatives, apparently seeking to show that they were not as religious as they claimed. According to press reports, the investigation was presided over in inquisitorial style. Three of the students were sentenced to jail terms of up to three years for blasphemy despite their denial of any irreligious intent. They were subsequently pardoned.

15. In the Special Representative's view, unpopular, awkward or politically incorrect points of view have to be clearly distinguished from legal defamation on the one hand and erroneous reporting causing economic damage on the other. In Iran there are some judges with the apparent power to close down publications and put journalists in jail for publishing views different from their own.

16. In the other areas of cultural expression, including film, books, including translations from foreign languages, theatre and popular music, the atmosphere has improved considerably. The responsible Minister has been quoted as saying that European classical music was "undeniably beautiful". Finally, the Special Representative notes the establishment of the first post-revolution association of Iranian writers, translators, poets and researchers under the title Iran Pen Association.

III. THE STATUS OF WOMEN

17. Starting modestly in 1991, the Bureau of Women's Affairs in the Office of the President has developed a number of programmes with the declared objective of realizing social justice and the advancement of women. In 1997 the first National Plan of Action for Women was published as part of an effort to "mainstream women's concerns in the national planning process". The objective was "a balanced gender perspective within the framework of Islamic principles". The plan acknowledged that women were still behind in certain areas resulting from

"the lack of proper mechanisms which are needed to promote more positive action in issues related to women". The principle aim was declared to be "to improve the qualitative and quantitative indices of education, culture, health, social welfare and employment for all women".

18. In October 1999, the first report on the implementation of the Plan of Action was published. It provided a detailed description of the activities undertaken to achieve "gender equality and women's advancement" through the national planning process. A significant number of offices of women's affairs had been established in government ministries and across the country. Various public information programmes had also been undertaken.

19. The report notes the qualitative improvements in the health and the education and training sectors, and the heightening awareness of gender issues through the mass media. The report describes the difficulties encountered in these terms:

> "The revision process of laws and legislation on women is a long-term complex procedure which makes modification of laws difficult. The fact that Iran consists of different ethnic groups and subcultures impedes the adoption of single cultural measures to remove or correct negative perceptions and attitudes."

20. The report analyses results in 12 areas and includes a section in each on "obstacles faced and lessons learned". These include the unwillingness of certain parents to have vocational or technical training for their daughters, the privatization policy in health and medicine which prevents early detection of disease, the lack of proper records concerning violence against women, the strong patriarchal attitude in society, and the limited access to financial resources that impedes women from running for elected office. In a section entitled "Human rights of women", the report notes as obstacles the inadequate awareness of women of their legal rights, the lack of strong mechanisms for promoting the human rights of women and the "improper" enforcement of laws.

21. According to government figures, some statistics concerning women are still arresting. For example, only some 11 per cent of the workforce are women; some 27 per cent of women 15-49 years old are illiterate. While the number of women engaged in higher education is impressive, anecdotal evidence in the press describes the situation at school level in blunt terms. The shortage of schools in the rural areas and particularly in the less developed regions of the country disadvantages girls in particular. Forty-three per cent of families cite economic problems as a reason for not sending their female members to school. According to a statement attributed to a senior official of the Ministry of Education, the suicide rate among girls and young women, "fed by depression, apathy and lethargy", has grown alarmingly.

22. According to published reports, some of the problems of concern to Iranian women themselves are patriarchal views in the workplace, the existence of a Civil Code provision requiring women to obtain the permission of their husbands to take jobs (even if the provision is widely disregarded and can in any event be circumscribed by a suitable provision in a marriage contract), the continuing requirement that women obtain their husband's permission to obtain a passport, and the prevailing inequality in the marriage and divorce laws.

23. In the Special Representative's view, it is clear that the obstacles to the realization of women's rights are both legal and cultural, and that on both fronts there is a great deal to be done. On the legal side, the Special Representative has repeatedly called for leadership by the Government in introducing the necessary legal and regulatory changes to remove some of the systemic causes of complaint by Iranian women. There are many modest measures, some suggested by him in the past, that could serve as commitments to change. With regard to cultural impediments, a problem faced by many societies, there is much to be learned, negative as well as positive, from the experience of others. It is clear, however, that leadership is required from the level of village elites to that of national elites including the highest levels of Government. Action is needed now.

IV. THE STATUS OF MINORITIES

A. General

24. There appear to be several Iranian government offices or commissions which have some responsibilities for the affairs of religious and ethnic minorities but they do not appear to have a high profile and their role in addressing the concerns of minority groups is unclear. For example, one of the long outstanding requests of the religious minorities is to have the right to name the directors of their schools from within their own community. It is not clear that this is being addressed. Another is the issue of Sunni places of worship, particularly in Tehran. In the Special Representative's view it is not a sufficient response to the latter to say that there are no legal prohibitions involved.

B. Evangelical Protestants

25. It is very difficult to establish an authoritative figure for the number of Evangelical Christians in Iran, apparently because many are forced to worship in private. In 1990, it was estimated that the various Protestant congregations might include 30,000 persons of whom perhaps 15,000 were Muslim converts. The condition of these Churches is described in some detail by the Special Rapporteur of the Commission on Human Rights on the question of religious intolerance in his 1996 report to the Commission after a visit to Iran (E/CN.4/1996/95/Add.2). According to information reaching the Special Representative, there is no reason to believe that conditions have improved. These groups continue to face harassment from the Iranian security authorities in terms of pressure against Muslim converts and against perceived efforts to proselyte among Muslims. In this regard the Special Representative wishes to point out that the right of conversion is clearly recognized in the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion and Belief, and in paragraph 5 of General Comment 22 (48) of 20 July 1993 of the Human Rights Committee (see HR/GEN/1/Rev.3).

26. The Special Representative has noted in paragraph 59 below that in the fallout over the serial killings scandal, doubt is now being cast on the 1995 trial of the alleged killers of three Protestant ministers. The Special Representative notes that the 1996 report of the Special Rapporteur of the Commission on Human Rights on the question of religious intolerance referred to similar doubts among the Christian community at the time.

27. The Special Representative notes the recommendations of the Special Rapporteur set out in his report referred to above. For his part, the Special Representative also recommends that the legal status of Protestant religious associations be rehabilitated, that Protestant communities be allowed to engage in religious activities in full, that all bans and restrictions be lifted on places of worship and access thereto, and that with respect to proselytism, conversion and apostasy, the Iranian authorities recognize international standards including freedom to charge one's religion and freedom to manifest one's religion or belief, individually or in community, in public or in private.

C. Baha'is

28. The situation of the Baha'i remains serious. Baha'is continue to be subject to prolonged imprisonment, confiscation of holy places, and denial of the right to assemble. The Baha'i community faces the ongoing and systematic violation of economic, social and cultural rights, through denied access to employment, termination of pensions on religious grounds, and lack of payment of unemployment benefits.

29. Fifteen Baha'is are imprisoned in Iran, of whom four are subject to the death sentence (see annex I). In this regard, the Special Representative has received a letter dated 2 November 1999 from the Permanent Representative of the Islamic Republic of Iran to the United Nations Office at Geneva, stating that Mr. Shabihu'llah Mahrami's death sentence had been commuted to life imprisonment, and that the relevant judiciary officials had requested commutation of the death sentence against Mr. Mousa Talibi.

30. In a November 1999 press conference in Paris, President Khatami responded to a question about the Baha'is by saying that no one should be persecuted because of his or her beliefs, and that he would defend the civil rights of all Iranians regardless of their beliefs or religion.

31. The Special Representative once again urges the Government of the Islamic Republic of Iran to improve its treatment of the Baha'i community. Specifically, he recommends that the Government cease discrimination against Baha'is in all spheres of public life and services, lift the ban on Baha'i organizations so that Baha'is may associate freely, ensure that the death penalty is not imposed on Baha'is for their religious beliefs, institute the reconstruction of destroyed places of worship wherever possible or at least ensure the provision of appropriate compensation to the Baha'i community, lift restrictions regarding the burial and honouring of the dead, and eliminate from passport application forms questions concerning religion so as to avoid infringement upon the freedom of movement.

32. The Special Representative again urges the Government of the Islamic Republic of Iran to implement the outstanding recommendations of the Special Rapporteur on religious intolerance on his visit to Iran. (E/CN.4/1996/95/Add.2, sect. II).

V. LEGAL SUBJECTS

A. Fair trial

33. The issue of fair trial is coming more and more to the fore in Iran as the Government seeks to establish the rule of law, and in particular as commitments are made by government officials that persons charged with offences will receive such treatment.

34. International standards of fair trial have been quite clearly articulated and it is obviously important that there be no misunderstanding as to what is involved. The standards concerned are to be found in the Universal Declaration of Human Rights (arts. 10 and 11), the International Covenant on Civil and Political Rights (art. 14) and various regional instruments.

35. These provide for:

(a) The right of equality before the law and the court;

(b) The right to trial by a competent, independent and impartial tribunal established by law;

(c) The right to a fair hearing;

(d) The right to a public hearing;

(e) The right to be presumed innocent;

(f) The right to be notified of the charges;

(g) The right not to be compelled to testify against oneself or confess guilt;

(h) The right to adequate time and facilities to prepare a defence;

(i) The right to be tried without undue delay;

(j) The right to defend oneself in person or through counsel of choice;

(k) The right to be present at trial and to appeal;

(l) The right to call and examine witnesses;

(m) The right to an interpreter;

(n) The right to be given reasons for judgement and to have them rendered in public;

(o) The right to appeal;

(p) The right to compensation for the miscarriage of justice;

(q) The right not to be tried again for an offence for which he/she has already been finally acquitted or convicted.

36. It is clear from the incidents reported in this and other reports on human rights in Iran, that one or more of these rights are often not available to defendants in Iranian tribunals. For example, reports reaching the Special Representative concerning the 13 Jews being detained in Shiraz on suspicion of espionage are reportedly being denied access to a lawyer of their choice, and given the lapse of 10 months since being detained, they have certainly not been brought to "trial without undue delay".

B. Reform of the legal system

37. Demands for reform of the legal system have been growing over the last two years. A new chief of the judiciary, Ayatollah Mahmoud Hashami Shahroudi, was appointed in August. He said that he wanted "clean and brave judges". In October he was quoted in the press as calling for real efforts to rehabilitate the justice system which was "in ruins". "We must tighten our belts and with determination and an iron will return to the judiciary its lost reputation". "We must presume a suspect is innocent. This way the liberties envisioned in Islam will be provided for. The right of the suspect is top priority".

38. In November Ayatollah Hashami Shahroudi spoke of the necessity of lawyers and judges finding their proper status in society, adding that the status quo "does not match what has been stipulated in Islam". He said that proposals for reform of the legal system would be forwarded to the Majlis shortly. So far, there has been an invitation to lawyers and judges to comment on the combined court system of about five years' standing that had been widely criticized by the profession, and a proposal for the establishment of a standing arbitral tribunal. Commenting in September on the student demonstration of early July, Ayatollah Hashami Shahroudi appeared to contradict a statement of the head of the revolutionary courts of Tehran, saying that the students involved were not guilty and that the issue was a social and cultural rather than a legal one.

39. The Special Representative notes the detailed commentary on reform of the legal systems and the reprinting of the United Nations Basic Principles on the Independence of the Judiciary in the August and September 1999 issues of the "Defenders News Letter", the publication of a prominent human rights NGO in Iran. It is a frank assessment of the system as seen from within Iran and together with the United Nations Basic Principles, provides something of a benchmark against which to measure the reform package promised by the head of the judiciary. It is also noted that this NGO has begun translating and distributing some reports on Iran prepared by international human rights NGOs.

40. The reform of the legal system and of the judiciary has been long outstanding and in the view of the Special Representative, the failure of the Government to address it seriously before now has been a major impediment to the introduction of a culture of human rights in the Islamic Republic.

41. There are references in other parts of this report to the shortcomings of the legal system. These include such critical matters as treatment in pretrial detention, forced confessions, the overcrowding in the prison system, the continuing existence of detention centres outside the

official prison system, and not least the denial of fair trial. Some problems suggest that urgent attention must be paid to the judiciary itself. Unacceptable conduct includes: conduct such as denying the right of the defence to call witnesses, stating that judgement would be rendered following the submission of the defence's closing submission and then issuing the judgement without giving time for the submission, sitting in on a jury deliberation, making statements about cases which do not fall within the jurisdiction of the speaker's court, sending defence lawyers to jail for such action as protesting the judge's refusal to allow him to call witnesses. Such a list is not exhaustive and perhaps not representative. However, it does suggest to the Special Representative that very thoroughgoing reform of the judiciary is urgently required.

42. There remains the long-standing problem of the Clerics Court. The Special Representative has on several occasions made clear his critical views on the conduct of the tribunal. He notes that in the opinion of many within Iran, this court is unconstitutional. The serious flaws in its procedure have been highlighted in several recent cases involving the press. The Special Representative reiterates his view that experience with this tribunal in Iran as well as that with similar tribunals in other societies has almost inevitably led to the denial of human rights, particularly with regard to the standards of fair trial.

C. Lawyers

43. The Bar Association is gradually finding its voice. In November the press carried an open letter to the Head of the Judiciary from the Association concerning the arrest in the courtroom of the lawyer representing a newspaper on trial. Later in the month the press carried the text of a letter from the Association to the Speaker of the Majlis protesting a provision in a bill before that body that would empower the judiciary to authorize lawyers to practise, a provision that the Association asserted was in flagrant contradiction with the existing Bar Independence Act, which gives such a power exclusively to the Association.

D. The prison system

44. In the past, the Special Representative has been informed that all places of detention in Iran were being brought within the jurisdiction of the Prisons Organization, a clearly desirable goal given the apparent number of places of detention operated by various government and quasi-government agencies. Whether this has yet been achieved is not clear. The international media carried an interview with one recently released editor of a weekly journal who stated that in June 1999 he had been arrested and detained for a time in the Ministry of Information (Security) detention centre within Evin prison. Following the student demonstrations he was detained again for three months in the same ministry's detention centre, known as Towhid prison, amidst appalling conditions, conditions that clearly violate the United Nations Standard Minimum Rules for the Treatment of Prisoners. In the Special Representative's view, the announced policy of transferring all places of detention to the authority of the Prisons Organization needs to be fully implemented and the standards in all facilities brought up to international levels.

45. A second major issue has been the overcrowding of Iranian prisons. In October, the Iranian press quoted the Director-General of the Prisons Organization as stating that almost two thirds of the prison population were there for drug offences, a category which has been

rapidly growing. In November, the press quoted a senior official of the Interior Ministry as declaring that Iran had 243 persons in prison for every 100,000 population against an international average of 10-15 persons per 100,000. This is a staggering figure even if the drug offence prisoners are removed from the equation. The prisons of Iran are very overcrowded as the Director-General himself has declared. Iran clearly faces a significant problem if the Government hopes to rehabilitate the majority of the prisoners. Overcrowding needs to be addressed urgently.

E. Torture and other cruel, inhuman or degrading treatment or punishment

46. The Iranian press carried a report in July that over a two-week period, some 21 men had been sentenced to amputation of fingers in Tabriz and elsewhere.

47. The Iranian press carried a report in October of two prisoners being sentenced to death, in one case to be preceded by 100 lashes and in the other by blinding.

48. The Iranian press reported in October that a married woman had been sentenced to stoning for adultery.

49. The Iranian press carried a report in November that two repeat armed robbers had been sentenced each to the amputation of their right hand and left foot.

50. The Special Representative has been calling for an end to such punishment for some time. He notes with concern reports that they have been re-promulgated in the Procedures in the General and Revolutionary Courts published in Official Gazette 1591 of 10 October 1999.

51. The possibility of torture also comes to light from time to time in the context of suspicious deaths. One such case reported in detail in the press in July 1999 was that of Mohammad Reya Karami in Isfahan. The circumstances, including the victim's arrest, subsequent transfer to hospital, testimony of the father after visiting the victim in hospital where he subsequently died, as well as the coroner's report, are highly suggestive of a case of torture. The Special Representative believes cases such as these suggest that torture in all its forms is still not an unusual event in Iran.

VI. DEMOCRACY/CIVIL SOCIETY

52. The next significant date in Iran's evolving democracy is widely considered to be the general elections of the Majlis set for 18 February 2000. It is clear that many events in Iran's political life today are being influenced by this prospect. Various political groupings are jockeying for advantage, most particularly with regard to the candidates' qualification process. In past elections, there have usually been complaints over the way the Council of Guardians carried out its responsibilities in this regard which was widely seen as arbitrary and idiosyncratic as well as being prejudicial to the prospects of reformist candidates. Efforts to establish clear legislative rules for this process were unsuccessful. The resulting August 1999 legislation has been criticized for, in the words of one press account, vesting in the Council, "vast powers to

micro-manage the election, including a number of provisions which clearly penalize the reformist cause". There were calls for the election to be postponed as well as calls that the implementation of the new law be postponed until after the February election.

53. Meanwhile, there have been increasing calls, particularly from the reformist camp, for a massive turnout of voters. The President declared that a large turnout would express "the determination of the people for development and progress".

54. Some political groupings are now arguing that the Majlis at present is "quasi-democratic" and that it is necessary to institutionalize a multiparty system. Until 1997, few licences for political groups were issued. It was announced in September 1999 that their number had now more than doubled to 100. A long-standing applicant for a licence, the "Iran Freedom Movement", reportedly has still not been issued a licence although it is in practice tolerated and is an important element on the political scene. The leader of the party has nevertheless stated that it would run candidates in the forthcoming election and argued that in accordance with the Constitution, all political parties should be allowed to run candidates.

55. The Minister of the Interior continues to express concern that the election should not take place in an atmosphere of violence and violation of law. "We must draw a clear line between the legal defence of our religion and irrational violent moves because support for violence is tantamount to overlooking [the] principle and philosophy behind the presence of the Islamic Revolution".

56. The President has continued to promote his concept of a civil society. In speaking to a board meeting of the Commission on the Implementation of the Constitution in late November, the President declared that Ayatollah Khomeni believed that "holding any ideas, even if those ideas may be against Islam, is free if someone does not embark on any attempt to topple the Government". The Ayatollah had been "steadfast in his idea of granting freedom to the minorities and various groups and people with different thoughts ...". That this view is not always respected is reflected in a press account of comments by the head of Iran State Radio and Television one month earlier in which he is quoted as declaring, "there is no religious pluralism in Islam ... A Muslim must be able to identify the enemy ... The heart of a devout Muslim must be filled with hatred against the enemies of Islam".

57. More positively, a group of Majlis deputies has announced the introduction of a bill for the amnesty of Iranians living abroad providing they do not have criminal records.

VII. DISAPPEARANCES AND SUSPICIOUS DEATHS

58. In his 1999 reports to the Commission and to the General Assembly, the Special Representative described the string of disappearances and suspicious deaths in the second half of 1998 of intellectuals and dissident political figures. Popular reaction was strong and immediate and became more so as it became clear that the killings were part of what became known as serial killings committed by officials in or close to the Ministry of Information (Security). Officially, those acts were attributed to "rogue elements" within the Ministry. Full investigation was promised with indictment and public trials to follow. In June, it was reported that one of the alleged ringleaders, Said Imami, had committed suicide in detention, news that

was greeted with much scepticism. By October, it was acknowledged that 27 persons had been detained in this matter. The name of another alleged ringleader, Mostafa Kazemi (Mousavi), began to circulate.

59. Meanwhile, dissatisfaction heightened with the slow progress of the investigation. There were demands that the investigation be broadened to include many other suspicious deaths going back to 1994. Information was filtering out attributing responsibility to present or former senior figures in the security establishment. Although denied by the military prosecutor's office, a much wider scenario began to be discussed publicly, one that involved 50 or more unexplained deaths in recent years. Included were the 1994 deaths of three Christian ministers which had been officially attributed to the Mujahedin, the deaths of Sunni community leaders, and the deaths of dissidents in bombings in Europe.

60. In December, the Speaker of the Majlis told the press that differences within the Government on the handling of the matter had been discussed between the heads of the three branches of Government in the presence of the Supreme Leader. A member of the Majlis committee trying to investigate the matter told the press that there was no responsible authority prepared to respond to the Committee's inquiries. At a December memorial service on the anniversary of the deaths of two of the intellectuals, the Secretary-General of the Society of Authors was reported to have declared that, "Basic measures have not yet been taken to identify and produce the murderers". The President himself has stated that he is not satisfied with the progress of the investigation.

61. The scandal has now raised such broad implications for the Government as well as such public scepticism that only the most thoroughgoing public inquiry and purgative action is likely to restore the Government's credibility in terms not only of law and order but of its respect for the most fundamental human rights.

VIII. OTHER IMPORTANT MATTERS

A. Student demonstrations

62. The student demonstrations in Tehran and Tabriz in early July were widely regarded as the most serious challenge the Government has faced since the Islamic Revolution. The Supreme Leader, the President and several of his ministers quickly denounced the raid upon the University of Tehran dormitories, one of a chain of escalating events that led to the students' demonstrations. Over a 1,000 students were said to have been arrested with apparently the majority of them being subsequently released.

63. The head of the Tehran Revolutionary Court had declared at one point that four of the students had been condemned to death. He gave no names and there was no evidence to suggest they had received a fair trial. Government spokesmen subsequently denied that they had been tried and sentenced. With regard to the students convicted in the Tabriz demonstrations, the press recently reported that 114 nationalist and religious figures had petitioned the head of the judiciary to order a retrial before a competent court in the presence of the students' lawyers and a jury.

64. In October, the President declared that the events at the University of Tehran had been a "disgrace". "The incident was shameful and we didn't think that one day the Islamic Republic would be forced to witness such an event". In December, Tehran radio reported that Tehran's former police chief and 19 other officers and men would be court-martialled for their part in the attack on the student dormitories. More generally, the conduct of the law enforcement agencies in the course of the student demonstrations in Tehran and Tabriz has precipitated calls in the press for the overhaul of the police system, the need for which seems to have been accepted, at least implicitly, by the national commander of these forces.

65. In the Special Representative's view, there are clearly two government agencies involved in the denial of human rights in the case of these demonstrations, the law enforcement agencies and the judiciary. While some disciplinary action has been undertaken with regard to the law enforcement agencies, there has as yet been no sign of action against the apparently disciplined and uniformed group of some 400 men bussed to the site who reportedly systematically ransacked the dormitories, assaulted students, and took a number of them prisoner. Nor has there been any recognition of wrongdoing on the part of law enforcement agencies after the students had been detained nor any accounting of the students still held and the charges, if any, against them. Further, there has yet to be a recognition of the judiciary's improper conduct in any trials that may have occurred and the prolonged pre-trial detention without access to lawyers.

B. Treatment of Shia dissidents

66. In earlier reports, the Special Representative has referred to the treatment accorded to dissident Shia clerics, a treatment that was often harsh and in total disregard of their human rights. Recently, there have been fewer such reports and indeed in one leading case, there seems to be some loosening up. Ayatollah Hossein Ali Montazeri, once the designated successor to Ayatollah Khomeni as supreme leader, was placed under house arrest in 1989 and his family and followers harassed. In 1997, outspoken criticism by Ayatollah Montazeri of the existing order of governance reached the public after which he was refused all visits and in March 1999, the mere mention of his name by the media was declared by the Clerics Court to be an offence.

67. Recently, Ayatollah Montazeri was granted permission to receive small groups of selected visitors, which he reportedly refused, declaring that he would not allow anyone to dictate who could visit him. Abdollah Nouri, in his recent celebrated trial, invoked Ayatollah Montazeri's name only to be told by the presiding judge that he would not allow the name to be mentioned. In an earlier trial in the Clerics Court of the prayer leader of a Tehran mosque charged with "propagating for Montazeri, spreading lies and confusing public opinion", the defendant was jailed for a year. He was reportedly among 180 clerics and seminary students who had signed a petition protesting the conditions under which Ayatollah Montazeri was being held.

68. In the Special Representative's view, the recent renewal of public discussion about the Montazeri case and, hopefully, the early restitution of his civil rights represent an important step in the growth of the Government's ability to tolerate dissenting political views on the most sensitive subjects.

C. The Islamic Human Rights Commission (IHRC)

69. The Special Representative has followed the evolution of this commission for some years. Obviously it should be a cornerstone in the establishment of a culture of human rights. The commission is clearly making progress and now seems to be addressing such difficult issues as the need for society to be able to debate the death penalty and, more generally, other public issues which, for some at least, touch on Islamic verities.

70. Moreover, in Iran, as seen from some of the recent cases involving the press, the right to criticize officials is often denied and is at best fragile. A major part of the work of any national human rights commission involves the criticism of officials. In the Special Representative's view, the highest levels of Government should be setting an example in this regard, particularly in manifesting their respect for and, as appropriate, deference to IHRC.

71. The Special Representative has taken note of the adoption on 8 August 1999 of a number of significant amendments to the Charter of IHRC which, among other things, provided for increased representation on the governing council of persons from the non-governmental sector.

D. Drugs: a national and international problem

72. As the Special Representative has reported in the past, Iran has gradually been acknowledging that in addition to a drug-smuggling and violence problem, it has a major domestic drug problem.

73. Most of the drugs enter the country on the eastern frontiers with Afghanistan and Pakistan, a long boundary through a harsh, thinly populated landscape that is difficult to police. According to the Government's latest figures, some 13,000 tons of contraband drugs have been seized since 1979, more than half of that in the last five years. This reportedly would mean that Iran now accounts for 85 per cent of the opium seizures and 30 per cent of the heroin and morphine seizures in the world. Some 2,700 Iranian law enforcement officials have died since 1979 in attempting to control the drug trade, 36 in one recent armed clash on 3 November near the Pakistan border. The smugglers are reportedly today typically armed with shoulder-fired anti-tank rockets, Kalashnikov assault rifles and, on occasion, even Stinger anti-aircraft missiles. Foreign tourists are now subject to kidnapping, apparently by those associated with the smuggling of drugs.

74. The head of the United Nations Office for Drug Control and Crime Prevention has recently called for greater recognition of and technical support for Iran's efforts to combat drug trafficking. The Special Representative recommends that this appeal be given serious consideration.

75. According to United Nations drug officials, there has been a growing demand for opium and heroin within Iran, particularly among those under 30. Some estimates place the number of users at 1.3 million. Such a situation carries a high social cost and by extension a human rights cost. This includes the overcrowding of jails mentioned elsewhere in this report, the devastating impact on certain tribal groups, particularly the Baluch who have been lured into the lucrative

drug trade, the spread of AIDS with reportedly 67 per cent of Iranian victims being afflicted through intravenous drug injection, the heavy burden faced by the families of addicts, and not least the diversion of so much youthful energy away from creative pursuits.

IX. CORRESPONDENCE WITH THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

76. During the reporting period, the Special Representative received a letter dated 2 November 1999 from the Permanent Mission, in response to his letter of 3 February 1997, in which it provided the following information:

> "On the eve of the anniversary of the Prophet Mohammed (peace be upon him), the Leader of the Islamic Republic of Iran has commuted the death sentence against Mr. Zabihollah Mahramy to life imprisonment."

> "The relevant judiciary officials have requested for commutation of the death sentence against Mr. Mousa Talibi. However, the process of the commutation request is still going on."

77. The outstanding correspondence between the Special Representative and the Permanent Representative of the Islamic Republic of Iran to the United Nations Office at Geneva is described in annex II. While acknowledging the letter of response by the Government during the reporting period, the Special Representative encourages it to make further effort to respond to his outstanding requests for information concerning individual cases.

X. CONCLUSIONS

78. Before turning to his conclusions, the Special Representative would note the following:

- Iran's thirteenth, fourteenth and fifteenth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/338/Add.8) were considered at the August 1999 session of the Committee on the Elimination of Racial Discrimination. The Committee noted that the Iranian report was much improved. The concluding observations of the Committee are published as CERD/C/55/Misc.32/Rev.4 of 18 August 1999 and the summary records of the relevant meetings as CERD/C/SR.1338 and 1339;

- Iran's initial report under the Convention on the Rights of the Child (CRC/C/41/Add.5) is scheduled for consideration at the May/June 2000 session of the Committee on the Rights of the Child;

- The Government of Iran invited and recently received a mission of the International Labour Organization (ILO). This was a high-level technical advisory mission to discuss all the outstanding points raised by ILO supervisory bodies concerning the application of ILO Convention No. 111;

- The Government of Iran invited and recently received a technical assistance needs assessment mission from the Office of the High Commissioner for Human Rights;

- As for the Special Representative, he was not invited to visit Iran in the period under review.

79. Turning to his conclusions, the Special Representative views Iran as a society in significant political turmoil. He believes the prospect is for substantial and far-reaching change which will inevitably have, and indeed in some areas has already had, a positive impact on the human rights situation. In the meantime, by international standards serious human rights violations continue to occur, particularly in the domain under the influence of the judiciary and of the law enforcement agencies.

80. The progress made to date is to some degree fragile. The pace of reform is uneven and in some areas there seems scant recognition of its pressing need. More particularly:

(a) In the area of freedom of expression, significant progress has been made in all the sectors that have come to the Special Representative's attention with the notable exception of the press. Here a high-profile struggle continues as to the scope of tolerated expression. At the moment, the reformist-minded newspapers are susceptible to arbitrary discipline by various tribunals for acts which do not appear to be contrary to any established legal norm. The process usually fails to meet the internationally accepted norms of fair trial. The need for a free discourse is an integral component of the civil society that the President seeks to build. The Special Representative believes that the paradigm for free speech must be tied to an objectively definable series of norms acceptable to the society as a whole. The Special Representative recommends that conscientious efforts be made by all branches of Government to achieve this goal;

(b) The Special Representative believes that significant progress is being made with regard to the status of women in selected but important sectors such as education and training, health and integration of a gender dimension into government planning. However, little progress is being made with regard to remaining systemic barriers to equality, and perhaps also, although it is less readily quantifiable, to the removal of patriarchal attitudes in society. The Special Representative recommends - again - that the Government take the lead in both these two areas;

(c) In the Special Representative's view, one of the backwaters of the human rights situation in Iran is the status of minorities, ethnic and religious. There are reports of studies being made of particular situations, but in general, the Special Representative is forced to conclude that sufficient political will is lacking to push this area onto the Government's priority list. The Special Representative recommends that the Government publicly acknowledge the need for change and that it commit itself to addressing the human rights problems that abound in this area;

(d) One of the areas in greatest need of thoroughgoing reform is that of the legal system. Clearly, it is on the Government's agenda but it seems to the Special Representative that many of the well-publicized reform proposals are regarded as simply too complex and too

politically difficult to implement with the urgency that they require. The Special Representative recommends that the announced reform of the legal system be given a high priority both in terms of political endeavour and of the allocation of resources;

(e) In many of the other areas mentioned in the body of the report, disappearance and suspicious deaths, and student demonstrations, to name only two, the Government is clearly aware of the human rights dimensions of the current problems but the machinery to address them seems to be inadequate with the result that the problems are festering and public frustration growing. The Special Representative urges the Government to cut through the apparent bureaucratic thicket and address the problems resolutely and urgently.

81. Finally, the Special Representative would observe that while the change to date has been important, human rights in Iran remains very much a work in progress. Significant problems remain some of which the Government clearly acknowledges and others which the Government appears to be reluctant to admit. Greater efforts are required.

Annex I

INFORMATION ON THE SITUATION OF THE BAHA'IS

The following is based on information received by the Special Representative.

1. The Baha'is arrested in Isfahan for their involvement with the Baha'i Institute of Higher Education (BIHE) and who received verdicts on 16 March 1999 all remain in prison. Dr. Sina Hakiman is serving a fixed prison term of 10 years. Mr. Farrad Khajeh and Habibullah Ferdosian are serving seven years and Mr. Ziaullah Mizapanah is serving three years.

2. Mr. Manuchehr Khulusi, a resident of Khurasan, was reportedly arrested on 9 June 1999 and transferred to Mashhad where he is being held in a Ministry of Information prison. While reports suggest that he was arrested because of his Baha'i activities, no indications have been given as to the charges brought against him or when his trial may be expected.

3. Mr. Arman Damishqui and Mr. Kurush Dhabihi were granted amnesty and released on 19 March 1999. They were reportedly arrested in early 1996 for having refused to renounce their faith.

4. The Special Representative received information concerning the hearing on 27 December 1998 of the Preliminary Investigations Board for Administrative Violations of the Head Office of the Board of Education and Training (Judgement No. 2687), in which Mr. Mithaqullah Ma'ani Intisari was found to have violated the law and therefore to have merited the punishment of permanent termination of governmental services. His offence was his membership in "one of the misled sects which have been rejected by Islam".

5. Baha'is remaining in Iranian prisons include Mr. Bihnam Mithaqui and Mr. Kayvan Khalajabadi, arrested on 29 April 1989 for "Zionist Baha'i activities"; Mr. Musa Talibi, arrested on 7 June 1994, charged with apostasy and sentenced to death but now being processed for commutation of sentence; Mr. Dhabihu'llah Maharami, arrested on 6 September 1995, charged with apostasy and sentenced to life, following commutation from a death sentence by the Supreme Leader of the Islamic Republic; Mr. Mansur Haddadan, arrested on 29 February 1996, charged with holding a children's art exposition and sentenced to three years in prison; Mr. Sirus Dhabihi-Muquaddam, Mr. Hidayat Kashifi Najafabadih and Mr. Ata'u'llah Hamid Nasirizadih, arrested in October/November 1997, charged with continuing "Family Life" meetings and sentenced to death; Mrs. Sonia Ahmadi and Mr. Manuchechr Ziyai, arrested on 1 May 1998, charged with holding meetings for youth and sentenced to three years' imprisonment.

6. Reports further indicate that limitations have been placed on visits to several of these prisoners held in Tehran, including the requirement that wives present proof of marriage to visit their husbands which is complicated by the non-recognition of Baha'i marriages by the Iranian authorities.

Annex II

CORRESPONDENCE BETWEEN THE SPECIAL REPRESENTATIVE AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

1. By letter dated 21 June 1999, the Special Representative drew the urgent attention of the Iranian authorities to the reported arrest in the Islamic Republic of 13 persons, all said to be Iranian Jews, suspected of spying for Israel. While referring to international norms and standards with regard to fair trial, the Special Representative noted with concern the lengthy period the investigation of this matter had apparently taken and the assertion he had received that during this period the accused persons had been denied, among other things, family visits. Referring to the Government's statement No. 179 of 14 June 1999 on this matter, the Special Representative requested assurances that in receiving the fair trial to which the Government had committed itself, the accused would be accorded their rights in accordance with international human rights norms, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly in resolution 43/173 of 9 December 1988. No response has been received.

2. The Special Representative joined the Special Rapporteurs on the question of torture, and on the promotion and protection of the right to freedom of opinion and expression, in sending an urgent letter on 12 July 1999 to the Minister for Foreign Affairs concerning the arrest and detention of Hechmatollah Tabarzadi and Hossein Kachani, both journalists of the weekly publication the Hovizat-U-Khich, which had since reportedly been banned.

3. According to the information received, the authorities have indicated that the two journalists were arrested for publishing information "contrary to public order and public interest" and "issuing an anti-establishment communiqué". On 6 July 1999, a number of students and other persons reportedly protesting the detention of the above-mentioned individuals at the United Nations office in Tehran were themselves arrested. It was said that all of these individuals had been denied access to a lawyer. In view of the incommunicado nature of their detention, fears have been expressed that the above-mentioned individuals may be at risk of torture and other forms of ill-treatment.

4. In the above-mentioned letter, reference was also made to the suspension by the Government of the Salam newspaper on the same day that the Majlis passed a new law which in principle restricts freedom of the press. The Salam night editor, Morad Raisi (Veissi), was reportedly detained on 7 July 1999. In the letter, a joint appeal was made to the Government to ensure everyone's right to freedom of opinion and expression, and that the right to physical and mental integrity of the above-named persons is protected in accordance with international human rights law. No response has been received from the Government.

5. On 13 July 1999, the Special Representative, in conjunction with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, addressed a letter to the Minister for Foreign Affairs concerning the alleged attacks by armed forces and members of the vigilante group, Ansar-i Hezbollah, against student demonstrators denouncing the closure of the daily newspaper, Salam. In this regard, concern was expressed about the reported deaths of four students, Na'imi, Sohrabian, Yavari and Zakeri, and the detention of

student activists Mohamad Masud Salamati, Sayed Javad Emami and Parviz Safaria. The Government was requested to guarantee the safety and security of the students and to ensure that their right to freedom of opinion and expression is protected as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

6. In a letter addressed on 30 July 1999 to the Minister for Foreign Affairs, the Special Representative referred to reportedly official figures, according to which a total of 1,200 persons had been arrested since the beginning of the student demonstrations, 750 of whom were said to have been released. On the same occasion, the Special Representative forwarded the names of a significant number of missing persons that had been brought to his attention. The Special Representative was particularly concerned that so many persons, some of whom reportedly had nothing to do with the latter days of demonstrations, might remain in detention without recourse to family or lawyers.

7. The above-mentioned letter also referred to communications by the Special Representative dated 18 September 1998 and 22 January 1999 regarding the insufficient medical attention provided to Mr. Amir-Entezam (see para. 1 above). Expressing deep concern about the continued detention of Mr. Amir-Entezam and his wife, Mrs. Elahe Mizani Amir-Entezam, both without apparent cause, the Special Representative observed that no response had been received from the Government to his above-mentioned communications on this case.